BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 28

In the Matter of:

SUN CAB, INC. d/b/a NELLIS CAB COMPANY,

Case No. 28-CA-079813

and

ABIY AMEDE, An Individual,

Charging Party.

Respondent,

The above-entitled matter came on for further hearing pursuant to adjournment, before JAY R. POLLACK, Administrative Law Judge, at the National Labor Relations Board, 600 Las Vegas Boulevard South, Room 400, Las Vegas, Nevada, on Wednesday, September 26, 2012.

APPEARANCES

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2	
3	On Behalf of the Counsel for General Counsel:
4	
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17	-
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1	I N D E X						67 -
2 3	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE	CRT EXAM
4 5 6 7	Matt Habeger	271 279	282			278	
8 9 10	Abiy Amede (Recalled)		285				
11 12	Senait Terefe	289	305	310			312
13 14	Yonas Yadessa	313	320				
15 16 17	Jamie Pino (Recalled)	323					
18 19 20	Jamie Pino (Recalled)	332 360	364			354	
21 22 23	Sandy Pineda	379	385				386

1 2		EXHIBITS	
3	EXHIBIT	IDENTIFIED	IN EVIDENCE
4 5	Respondent		
6 7	1	272	279
8 9	2	273	279
10	3	274	279
11 12	4	279	
13 14	5	305	308
15 16	6	320	322
17 18	7		
19		350	385
20 21	8	352	385
22 23	General Counsel		
24	33	325	331
25 26	34	325	331
27 28 29	35	329	331

1 PROCEEDINGS

- JUDGE JAY R. POLLACK: On the record.
- 3 The parties have agreed to take this witness out of order.
- 4 Raise your right hand please.
- 5 Whereupon,

6 <u>MATT HABEGER</u>

- 7 was called as a witness, by and on behalf of the Respondent,
- 8 and having been duly sworn, was examined and testified as
- 9 follows:
- 10 JUDGE POLLACK: Please be seated. Please give us your
- 11 name and address for the record.
- 12 WITNESS: My name is Matt Habeger. You need a home
- 13 address or a work address?
- 14 JUDGE POLLACK: Either one.
- 15 WITNESS: Work address is 9699 Tiara Grande, San Diego,
- 16 California, 92126.
- 17 (Long pause)

18 DIRECT EXAMINATION

- 19 Q BY MR. WINKLER: Mr. Habeger, by who are you employed?
- 20 A BH Gold Insurance Agency.
- 21 0 Where is that located?
- 22 A In San Diego, California.
- 23 Q Are you here pursuant to a subpoena today?
- 24 A Yes.
- 25 Q Does -- what position do you hold with that company?

ARGIE REPORTING SERVICE

- 1 A I'm an insurance agent and one of our clients is Nellis
- 2 Cab.
- 3 (Long pause)
- 4 Q I'm showing you Respondent's Exhibit 1, which is a two-
- 5 page document. Do you know what this document is?
- 6 (Respondent Exhibit 1 marked for identification)
- 7 A Yeah, this is a declarations page for the Nellis auto
- 8 insurance policy.
- 9 Q For what time period?
- 10 A For November of 2010 through November of 2011, November
- 11 15th of those years.
- 12 (Long pause)
- 13 Q I'm sorry, the dates, from November of 2010 to November of
- 14 2011, correct?
- 15 A Correct.
- 16 Q Under the column that says Premium, there's \$1,107,000 and
- 17 some change, what is that?
- 18 A That's the annual premium for the auto insurance for
- 19 Nellis Cab.
- 20 Q So that's what Nellis Cab paid to --
- 21 A Nevada Capital Insurance during that time, correct.
- 22 Q Right. Nevada Capital Insurance, what is your
- 23 relationship to them?
- 24 A We are one of their representatives, one of their agents.
- 25 Q So basically, your company negotiated the \$1.1 million

- 1 premium. Is that accurate?
- 2 A I mean, to some extent. They tell us what the premium
- 3 will be.
- 4 Q What is the second page of this document? Am I accurate
- 5 that the second page is actually part of the document or is it
- 6 separate?
- 7 A It's more like a page 2, it's just a little bit more
- 8 detailed declarations.
- 9 Q Okay.
- 10 A It indicates the total coverage at the top with the \$2
- 11 million combined single limit, \$2 million CSL represented
- 12 there.
- 13 Q That's under the column's --
- 14 A Limit.
- 15 Q Limit, okay. Is there a deduction number here in this
- 16 document?
- 17 A A deductible?
- 18 Q Yes.
- 19 A I don't know that it's shown specifically here, but it was
- 20 \$10,000 per occurrence at that time.
- 21 Q Okay.
- 22 (Long pause)
- 23 Q I'm showing you Respondent's No. 2. Do you recognize this
- 24 document?
- 25 (Respondent Exhibit 2 marked for identification)

- 1 A I do.
- 2 Q It appears to be an email from you to Michelle L. Langille
- 3 at -- who is that?
- 4 A She -- I don't know her exact title. She's a manager at
- 5 Nellis Cab, the president perhaps.
- 6 Q What does the email indicate?
- 7 A This email indicates the per medallion pricing that was
- 8 going to be available to Nellis beginning for the term after
- 9 the declarations page that we looked at. So that would be for
- 10 November 2011 to 2012. These coincide -- you know, multiplied,
- 11 I don't know off the top of my head exactly what the number
- 12 was, but multiplied by about 120-125 medallions that Nellis was
- 13 operating at the time, to arrive at an annual premium.
- 14 (Long pause)
- 15 Q Did you recently send me an email telling me what the
- 16 various options were as far as cost back in November of 2011 --
- 17 A I did.
- 18 Q -- for insurance this year?
- 19 A I did.
- 20 Q What is Respondent's 3?
- 21 (Respondent Exhibit 3 marked for identification)
- 22 A Those are the total premiums. They're in a different
- 23 sequence than R-2, so you'd have to kind of match them up. In
- 24 any case, the important one to look at is the matching coverage
- 25 level to the expiring policy, which would be \$2 million total

- 1 coverage and \$10,000 deduction. The total premium for that one
- 2 annually would've been \$2.34 million.
- 3 Q So if they would've retained the same coverage and
- 4 deductions, the costs would've more than doubled, correct?
- 5 A Correct.
- 6 Q Did you have any conversations -- well, did you have any
- 7 conversations with officials at Nellis during November of 2011
- 8 concerning these options?
- 9 A We did, yeah.
- 10 Q Okay. By we, who is that?
- 11 A That would be my father, Bill Habeger, who's president of
- 12 our insurance agency; Dwayne Ford, who handles claims for
- 13 Nellis Cab, was also there; Jamie was there, Michelle was
- 14 there. I'm not 100% sure, but I believe Ray was present at
- 15 that meeting too, Ray Chenoweth.
- 16 Q And approximately when was this? Was it in November of
- 17 2011?
- 18 A Yeah, it could've possibly been very late in October,
- 19 probably November 2011.
- 20 Q Tell us what happened at this meeting.
- 21 MR. SMITH: Your Honor, I would object. Without further
- 22 questioning, although it's been established that Bill, Jamie
- 23 and Ray were there, I don't think it's been established whether
- 24 the witness was there.
- 25 WITNESS: I was there.

- 1 JUDGE POLLACK: Okay.
- 2 MR. SMITH: Withdrawn, Your Honor.
- 3 Q Tell us what was said at this meeting.
- 4 A We basically, you know, had a complete loss history for
- 5 Nellis, indicating all their losses down to dollar one, which
- 6 was information we got from DB Ford's office, the claims
- 7 handling agency. We were looking at frequency by year, and it
- 8 was evident that the trend was moving in the wrong direction
- 9 for Nellis.
- 10 They were going -- I think in 2010 to 2011, they had 429
- 11 incidents or accidents. These could be anything from backing
- 12 over a valet sign at a hotel to running a red light and causing
- 13 a serious, serious accident. Anything in between would count
- 14 as one. So the total for that year was 429, which was the
- 15 worst year that we had experienced with Nellis since we started
- 16 working with them back in November of '05.
- 17 The gist of the meeting was really to kind of get
- 18 everybody onboard with safety, try to figure out how we could
- 19 make them a safer company, help the taxi industry as a whole
- 20 here in Las Vegas to have fewer accidents, cause fewer problems
- 21 on the road. In doing that, the key that we push a lot is the
- 22 frequency leads to severity.
- 23 Q Did you use that phrase at that meeting?
- 24 A Many times.
- 25 Q What do you mean by that?

- 1 A The thinking -- and it's proven throughout history of auto
- 2 insurance, or any kind of insurance, the more times you're
- 3 having incidents or accidents or near misses, the more large
- 4 losses you're also going to experience. So just the same way,
- 5 if every day you almost ran over a pedestrian in the crosswalk
- 6 or almost hit a bicyclist on the road, eventually one of these
- 7 days you're going to run over that person or hit the bicyclist.
- 8 Q Do you recall if any suggestions were made as to what they
- 9 can do to improve their safety?
- 10 A There were discussions of a lot of things. We had kind of
- 11 been having conversations with then in the past about the Smith
- 12 System, which is well known, large kind of fleet safety
- 13 training program. The UPS Safety Program is derived from that,
- 14 lots of huge companies use it.
- MR. SMITH: Your Honor, I would object to further hearsay
- 16 about -- other than what the insurance costs were. But now
- 17 he's going into what could be statements made for the truth of
- 18 the matter asserted regarding what Nellis could do. I mean, if
- 19 it's about insurance rates, I think it's one thing, but it
- 20 could very quickly go into what Nellis was considering for
- 21 policies and things like that.
- 22 MR. WINKLER: All I'm asking is what they told Nellis at
- 23 that time.
- JUDGE POLLACK: Can we get to what, if any, decisions were
- 25 made at this meeting?

- 1 Q Were there any suggestions concerning the Smith --
- 2 A Yes.
- 3 Q From who to who?
- 4 A From myself to Nellis Cab, or from my dad to Nellis Cab.
- 5 We were on the same page suggesting that they implement a
- 6 program whereby all accidents are counted against a driver,
- 7 whether it's at fault or not, and that any incident at fault or
- 8 not, that driver should be put through this kind of retraining,
- 9 online safety program that Smith System offers.
- 10 MR. WINKLER: Offer into evidence Respondent's 1, 2 and 3.
- 11 MR. SMITH: Your Honor, if I could voir dire Respondent's
- 12 1?
- 13 JUDGE POLLACK: Go ahead.
- 14 MR. SMITH: Okay.
- 15 **VOIR DIRE**
- 16 Q BY MR. SMITH: Looking at page 2 of Respondent's 1,
- 17 there's the other sheet, the second sheet that's attached to
- 18 it, which the only thing I really see on this is a number of
- 19 employees. It says 26 and the premium is 240. Is there
- 20 anything on the second sheet that gives us any usable
- 21 information as far as insurance costs for Nellis' drivers?
- 22 A I'm not seeing the 26.
- 23 Q About two-thirds of the page down, there's two numbers on
- 24 there, 26 and 240, but that appears to be the only numbers on
- 25 the page.

- 1 MR. WINKLER: I'm sorry, did I give you the --
- 2 MR. SMITH: Is that the same page?
- JUDGE POLLACK: I don't think so.
- 4 MR. SMITH: No.
- 5 MR. WINKLER: I'm sorry. Maybe in our haste, we gave you
- 6 the wrong second page. Here is Respondent's 1.
- 7 MR. SMITH: Yes.
- 8 (Long pause)
- 9 MR. WINKLER: I apologize, Your Honor. Can we go off the
- 10 record for just a moment?
- 11 JUDGE POLLACK: Off the record please.
- 12 (Off record)
- 13 JUDGE POLLACK: Respondent's 1, 2 and 3 are received.
- 14 (Respondent Exhibits 1, 2 and 3 received into evidence)
- 15 (Long pause)
- 16 CONTINUED DIRECT EXAMINATION
- 17 Q BY MR. WINKLER: I'm showing you Respondent's No. 4 for
- 18 identification. Do you know what this document is?
- 19 (Respondent Exhibit 4 marked for identification)
- 20 A I do.
- 21 Q First of all, there's a column that says Policy EFF. Do
- 22 you see that column?
- 23 A Correct.
- 24 Q Below that, it has 3/1/2012.
- 25 A Correct.

- 1 O Okay. What is this document?
- 2 A This document was issued to DB Ford insurance adjusters.
- 3 This is a certificate of insurance. It just proves coverage
- 4 for Nellis Cab specifically in this case, auto liability
- 5 coverage. We issued this to indicate that Nellis had increased
- 6 their deductible to a \$25,000 self-insured retention
- 7 deductible, very similar concept.
- 8 Q Is there any change in the limit on coverage?
- 9 A The coverage had been reduced to \$1 million on November
- 10 15th, 2011. But then on March 1st, 2012, they also increased
- 11 their deductible to \$25,000.
- 12 Q Okay. Okay, maybe stating the obvious, but if they
- increased their deductible from \$10,000 to \$25,000, is that
- 14 potentially costly to the company?
- 15 A It reduces the insurance premium, but it means that, on
- 16 the hand, Nellis Cab is absorbing all those claims underneath
- 17 that \$25,000 level instead of just the ones under \$10,000.
- 18 Q What happens if there's a -- I'll withdraw that.
- 19 (Long pause)
- 20 Q Have you done any calculations pursuant to my request to
- 21 try to figure out where they stand this year as far as
- 22 accidents versus last year?
- 23 A I have.
- 24 Q Describe that for me please.
- MR. SMITH: Your Honor, if there were documents produced,

- 1 I would request the documents rather than just the testimony of
- 2 what's in the documents.
- 3 MR. WINKLER: He hasn't given me any documents. He has a
- 4 notepad that he's figured these things out and he's got the
- 5 notepad here.
- 6 JUDGE POLLACK: Okay.
- 7 MR. SMITH: Then, Your Honor, I would object as hearsay
- 8 because we're referencing a document that we don't have,
- 9 whether it's a notepad or a spreadsheet, or anything like that.
- JUDGE POLLACK: You'll be able to see the notepad.
- 11 MR. WINKLER: Yes, he can -- I'd just assume have the
- 12 client take a look at it too, but -- ask him to do it from his
- 13 memory as to what he calculated. So I'm asking him what he
- 14 calculated, not necessarily what's on the pad, but they would
- 15 be the same. I have no problem with --
- 16 JUDGE POLLACK: You're going to have to produce the
- 17 notepad for cross-examination.
- 18 MR. WINKLER: That's fine. I have no problem.
- 19 A Yeah, so this year versus last year, I think I was looking
- 20 at up through September the 24th, which was two days ago.
- 21 There were 239 incidents or accidents this year versus the last
- 22 year at the same time was 28% more than that. Or if we're
- 23 talking in full calendar years, last year there were 429
- 24 incidents and accidents. If you extrapolate year-to-date into
- 25 a full year, it would 429 last year versus 308 this year.

- 1 Q Okay.
- 2 A Which is a 28% decrease.
- 3 Q So there's 28% fewer accidents?
- 4 A Incidents and accidents, correct.
- 5 Q Okay. Was that calculated based on the same amount, the
- 6 same size of fleet that they had last year?
- 7 A No, I believe the fleet has grown, off the top of my head,
- 8 maybe ten medallions, which could be as much as 8%. I think
- 9 they went from 120-some odd medallions up to 134-135.
- 10 Q So if you factored that in, would it be more than 28%?
- 11 A Correct, the drop in claims frequency would be, I would
- 12 think, well over 30%.
- MR. WINKLER: I have no further questions.
- MR. SMITH: Your Honor, if I could have a few moments?
- JUDGE POLLACK: Off the record please.
- 16 (Off record)

17 CROSS-EXAMINATION

- 18 Q BY MR. SMITH: You had mentioned the Smith Training during
- 19 your direct examination. I'm sorry, my name's Tony Smith. I'm
- 20 an attorney for the National Labor Relations Board. You
- 21 mentioned the Smith Training during your direct examination.
- 22 Did your company record Nellis drivers who attended Smith
- 23 Training?
- 24 A The program, as we've implemented it with the cab
- 25 companies we work with here, we call it Train the Trainer. So

- 1 I know Jamie attended one of these Train the Trainer programs.
- 2 As time went on, we had another course this year where four or
- 3 five of their cab managers who are also drivers attended the
- 4 training. The theory is then that they take what they've
- 5 learned from that into the classroom setting where they train,
- 6 you know, drivers in bulk.
- 7 Q So you don't track who goes to the training?
- 8 A As far as the individual driver level, no, we don't. I
- 9 have record of who went to these week-long Train the Trainer
- 10 courses.
- 11 Q So how does -- if you don't track who attended the
- 12 training, how does this training program reduce insurance
- 13 rates, if at all?
- 14 A It would be strictly based on results. The insurance --
- 15 each year, the insurance carrier looks at the claims, looks at
- 16 the loss information, and directly related to that, they apply
- 17 loss development factors and do all their actuarial stuff. If
- 18 the claims have gone down, if they pick future claims to be
- 19 better, then insurance rates would go down. If they pick
- 20 future losses to be worse, insurance rates would go up.
- 21 O You can't require a company like Nellis to actually
- 22 implement a system like that, can you?
- 23 A I suppose you could, but we never went to that step.
- 24 These are purely suggestions to try make things safer, help
- 25 their insurance costs, help keep the city better so you're not

- 1 out killing passengers in cabs all the time.
- 2 Q So with the lack of tracking, is there anything reported
- 3 when a driver has a first accident following any implementation
- 4 of Smith policy that a driver had attended the Smith Training?
- 5 A That would be a procedural, you know, internal policy
- 6 thing with Nellis. I'm not familiar with --
- 7 Q Nothing reported to you that you know of?
- 8 A As far as if they had an accident?
- 9 Q Not as far as if they had an accident, but if they took
- 10 the Smith Training following the accident.
- 11 A No, we don't track that. That's a company decision, an
- 12 insured decision.
- 13 Q There was a question about the notes you had on the
- 14 notepad. Would you be able to locate those notes please?
- 15 A Yeah, I've got them here.
- 16 O Can I --
- 17 A Yeah, it's just some chicken scratch I put together this
- 18 morning, but it shows frequency by calendar year here, and this
- 19 is the year. Then I just calculated the delta year-over-year
- 20 there as a percentage.
- 21 O What was the source of information you used to produce
- 22 those notes?
- 23 A This was a -- what we call a loss run, which is a summary
- 24 of all claims and accidents from DB Ford, the local claims
- 25 adjuster that handles the claims for Nellis.

- 1 Q Had that local claims adjuster -- have they been the same
- 2 claims adjuster handling Nellis accounts for --
- 3 A Yeah, even before we were involved -- they could tell you
- 4 for sure, but we've been working with them since November 2005.
- 5 O Thank you, Mr. Habeger.
- 6 MR. SMITH: I have no further questions.
- 7 MR. WINKLER: No further questions.
- 8 JUDGE POLLACK: That's all then, sir.
- 9 WITNESS: Great.
- 10 JUDGE POLLACK: Thank you.
- 11 WITNESS: Yeah.
- 12 (Witness excused)
- 13 JUDGE POLLACK: Off the record.
- 14 (Off record)
- 15 JUDGE POLLACK: You're still under oath.
- 16 Whereupon,
- 17 ABIY AMEDE
- 18 was recalled as a witness, by and on behalf of the General
- 19 Counsel, and having previously been duly sworn, was examined
- 20 and testified as follows:
- 21 CROSS-EXAMINATION
- 22 Q BY MR. WINKLER: Mr. Amede, my name is Jim Winkler. I'm
- 23 an attorney for the Respondent Company. The meeting that you
- 24 went to, the TA meeting that you went to where there was a
- 25 large crowd, that you actually spoke there, do you recall that?

- 1 A Yes.
- 2 Q You were allowed to speak for three minutes. Is that
- 3 correct?
- 4 A Yes.
- 5 Q Many of the other drivers that also spoke, they were
- 6 allowed three minutes as well, correct?
- 7 A Yes.
- 8 Q When you were terminated from Nellis Cab, you had a
- 9 conversation with someone concerning the reason you were fired,
- 10 or something like that?
- 11 A My supervisor.
- 12 Q Who is that?
- 13 A Osmel.
- 14 Q Osmel, okay. Did you ask for your accident file?
- 15 A That day, I asked -- first, he told me I was fired, so I
- 16 asked any paper if I could get from the company. I asked two
- 17 questions. First, I get the first letter, I got fired because
- 18 of accident, he told me. Second, I also asked him for my
- 19 personnel file.
- 20 Q Okay, let's go to this long break that you had on February
- 21 4 with the other taxicab drivers.
- 22 A Yes.
- 23 Q How did you learn about this again?
- 24 A Okay. They were posting a lot of posters and -- like
- 25 flyers at the airport. Before that day, about three or four

- 1 days before, in hotels, mostly like Palazzo, Venetian, they got
- 2 the cabs, so there were flyers out there where everybody's
- 3 taking a long break. I received many texts on my phone.
- 4 Q Do you have any of those flyers?
- 5 A No.
- 6 Q Okay, I know it's been awhile, but can you tell me what
- 7 was on the flyer, as best you can recall?
- 8 A It say all the drivers in Las Vegas, all cab drivers, were
- 9 going to be taking long break. There was a reason to say we
- 10 need to meet together to solve the problems. They also
- 11 concerned about a few things about hiring more cabs, the
- 12 company was asking.
- 13 Q Did it say where to meet?
- 14 A No.
- 15 Q Did it say what time?
- 16 A Yeah, I think it says a time on it.
- 17 Q What time was that, if you recall?
- 18 A I'm not 100% sure, but 6:00 or 7:00.
- 19 0 6:00 or 7:00?
- 20 A Yes.
- 21 Q You say you went to a restaurant to attend this meeting.
- 22 Is that correct?
- 23 A Yes.
- 24 Q How did you know to go to that restaurant? Was that on
- 25 the flyer or one of the texts?

- 1 A No. I received a text and it was a text on that day. I
- 2 received some phone calls from my friends.
- 3 Q Okay. Friends from Nellis or a different company?
- 4 A Different company.
- 5 Q Okay.

6 (Long pause)

- 7 Q Did you know the Super Bowl was that weekend?
- 8 A Yes, I do.
- 9 Q Do you know why that weekend was chosen for this meeting?
- 10 A No.
- 11 Q Anybody in any of these texts that you got ever talk about
- 12 it being Super Bowl weekend?
- 13 A No.

14 (Long pause)

- MR. WINKLER: I have no further questions.
- MR. SMITH: No questions, Your Honor.
- 17 JUDGE POLLACK: That's all then. Thank you.
- 18 WITNESS: Okay. Thank you so much.
- 19 (Witness excused)
- 20 MR. SMITH: Your Honor, if I could have a few moments off
- 21 the record?
- JUDGE POLLACK: Off the record please.
- 23 (Off record)
- 24 Whereupon,

25 SENAIT TEREFE

- 1 was called as a witness, by and on behalf of the General
- 2 Counsel, and having been duly sworn, was examined and testified
- 3 as follows:
- 4 JUDGE POLLACK: Please give us your name and address for
- 5 the record.
- 6 WITNESS: My name is Senait Terefe.
- JUDGE POLLACK: Your address please?
- 8 WITNESS: Address?
- 9 JUDGE POLLACK: Yes.
- 10 WITNESS: 8501 West University, Unit Number 2016, Las
- 11 Vegas, Nevada, 89147.
- 12 JUDGE POLLACK: Can you spell your name please?
- 13 WITNESS: S-e-n-a-i-t, T-e-r-e-f-e.
- JUDGE POLLACK: Could you please speak up so everybody can
- 15 hear you?
- 16 WITNESS: Okay.
- 17 JUDGE POLLACK: Go ahead.
- 18 MR. SMITH: Thank you, Your Honor.
- 19 DIRECT EXAMINATION
- 20 Q BY MR. SMITH: Ms. Terefe, where do you work now?
- 21 A Nellis.
- 22 Q How long have you worked for Nellis?
- 23 A Almost two years, since 2010, I believe June.
- 24 Q Around June of 2010?
- 25 A Yes.

ARGIE REPORTING SERVICE

- 1 Q What do you do there?
- 2 A I drive a cab.
- 3 Q In February of 2012, what was -- were you working in
- 4 February of 2012?
- 5 A Yes.
- 6 Q What was your schedule during February of 2012?
- 7 A I have three days off and four days working schedule. My
- 8 days off was Tuesday, Wednesday, Thursday. Friday and Monday
- 9 is my work schedule.
- 10 Q If I could ask you again to make sure you're speaking up.
- 11 What hours did you work the days that you worked?
- 12 A 3:00 to 3:00.
- 13 Q Is that 3:00 --
- 14 A Night -- p.m. until a.m., 3:00 p.m. and 3:00 a.m., up to
- 15 3:00 a.m.
- 16 Q So the time that you started was?
- 17 A 3:00 p.m.
- 18 Q Thank you. Did you participate in a long break earlier
- 19 this year?
- 20 A Yes.
- 21 Q Do you remember, what was it about?
- 22 A It was all about not -- refusing more cab -- the taxicab
- 23 company, they were asking more cab, so we just -- we didn't
- 24 want more cabs, so we have to take long break. That's why we
- 25 took long break.

- 1 Q What did you as part of this long break?
- 2 A I went to my friend's house.
- 3 Q What time did you go there?
- 4 A I'm not sure the time, but I believe it's from 7:00 or
- 5 6:00 up to -- the first ride after the break, I pick up 9:00 --
- 6 no, 9:30, I believe.
- 7 Q So the actual times, you're not real clear on?
- 8 A I'm sorry?
- 9 Q I'll withdraw the question.
- 10 A Okay.
- 11 Q So after you got done -- did you do anything other than
- 12 going to your friend's house for the long break?
- 13 A Yeah, when I come back from the break, all cabs, they were
- 14 driving on the street. So I went to there from Wynn Hotel up
- 15 to Mandela Bay. After that, I went to Tropicana, I pick up
- 16 ride, and the supervisor, he call me, I have to return the car.
- 17 Q Do you know who that supervisor was?
- 18 A Yes, his name is Raul.
- 19 Q Raul?
- 20 A Raul, yes.
- 21 Q How did he call you?
- 22 A The first call, I didn't get it because -- I guess went to
- 23 answering machine. The second call, he called me and I pick
- 24 up. He told me I have to return the car right away.
- 25 Q When you say it went to an answering machine, is that --

- 1 A After I go to company when I check my voicemail, I got his
- 2 message.
- 3 Q Okay.
- 4 A But he called me twice.
- 5 Q This answering machine, was that on some device that's on
- 6 the cab or was it your cell phone?
- 7 A It's my cell phone.
- 8 Q You said he called and first left a message. Do you
- 9 remember about when it was that you talked to him next?
- 10 A After I pick up from Tropicana to Cosmos, so when I go to
- 11 Cosmos, that's why he called me, I answer and he told me I have
- 12 to return the car. I don't know the time exactly, I believe
- 13 9:30 or 10:00.
- 14 Q What did you do after that?
- 15 A I returned it to the company.
- 16 Q Did you get called on the radio also?
- 17 A I don't know, I didn't hear.
- 18 Q Did you hear anything?
- 19 A I don't think he called me on the radio because my radio
- 20 is on both sides, the driver and the dispatch, both side is on.
- 21 Q Were you hearing anything on the radio?
- 22 A I didn't hear my number.
- 23 Q But other than just the calls for you, did you hear
- 24 anything else on the radio?
- 25 A No, other driver he was calling about like, you know, the

- 1 other drivers. They have to -- he was calling the cab number.
- 2 When you answer, he told the driver they have to return it to
- 3 the yard, the cars.
- 4 Q Is that normal to hear calls on the radio for drivers to
- 5 return to the yard?
- 6 A No, unless the car is broke down or something. That was
- 7 my first time.
- 8 Q Do you know what time you got back to the yard?
- 9 A I'm not -- maybe I not remember the time exactly, but I
- 10 believe when I got in the yard, 10:45 or 11:00.
- 11 Q On that particular night, what time was your shift going
- 12 to end?
- 13 A 3:00.
- 14 Q When you got back to the yard, who was -- what did you do
- 15 when you got back to the yard?
- 16 A I did my paperwork and the supervisor, he was there. We
- 17 were maybe five people or more than that and one of our friend,
- 18 he -- why they called us and how come we don't finish our
- 19 shift.
- 20 0 Who said that?
- 21 A One of my friend. And he say, he's just doing his job.
- 22 Q Who said he's just doing his job?
- 23 A The supervisor.
- 24 Q Do you know the supervisor's name?
- 25 A Yeah, his name is Raul.

- 1 Q Raul?
- 2 A Yes, and we have to call Monday to -- about the work.
- 3 Q What happened with your cab, if you know?
- 4 A Nothing, I just park it.
- 5 Q Who took your cab after you turned it back in?
- 6 A No one, because that time, it's 11:00, right, and my shift
- 7 is done at 3:00. No driver at that time came to work.
- 8 Q So when you said there were about five other drivers there
- 9 -- or five other people there, do you know --
- 10 A They participate to the long break, so they called, they
- 11 have to return the car. That's why I saw in the yard with me.
- 12 Q So other than the drivers that participated in the long
- 13 break and Raul, who else did you see at Nellis when you got
- 14 there?
- 15 A In the dispatch, they were there.
- 16 Q So the drivers that took part in the long break, Raul, the
- 17 dispatch --
- 18 A Yeah, the dispatch, the office, because the driver room
- 19 and the dispatch is connected. The supervisor, he was there
- 20 when we come back to the yard, he was there. He collect our
- 21 names and we went home.
- 22 Q Other than those people, was there anybody else you saw
- 23 there at Nellis?
- 24 A No.
- 25 (Long pause)

- 1 Q When Raul said, "I'm doing my job," did anybody respond to
- 2 that?
- 3 A No one.
- 4 Q What happened next? After your -- was there anything more
- 5 that happened that day?
- 6 A On Saturday?
- 7 Q On the Saturday.
- 8 A We went home, that's it.
- 9 Q What happened next with you?
- 10 A He told us we have to call Monday and all 17 drivers, we
- 11 went to Nellis Company. The supervisor came out, he told us we
- 12 should call, not to come. We was going to talk Jamie, and
- 13 Jamie, he was -- the supervisor, he told us Jamie, he's not
- 14 there.
- 15 Q He said Jamie was not there. Did you end up seeing Jamie
- 16 right then?
- 17 A No.
- 18 Q So do you know --
- 19 A I just see his car and I didn't see Jamie.
- 20 Q So what happened after -- do you know who the supervisor
- 21 was that told you --
- 22 A Osmel.
- 23 Q Osmel? So after Osmel told you guys to call, not to come
- 24 in, what happened next?
- 25 A He told us, they're going to call us.

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- 1 Q So what happened after that?
- 2 A We were -- all 17 drivers, we would meet up at the
- 3 Starbucks and we have to get our cars. When we go there, they
- 4 called and we have to go -- they give us a time to talk the
- 5 manager. So they called the other drivers and they called me,
- 6 I have to talk to them -- I believe Tuesday or Wednesday. I
- 7 don't know exactly the day.
- 8 Q You said they were calling the other drivers. How did you
- 9 know that they were calling the other drivers?
- 10 A We talk each other because we didn't go home. We were at
- 11 the Starbucks, our car area, and they called the -- all my
- 12 friends, the 17 people. One of them, they called -- they
- 13 called me, and the other one, they called me now and they
- 14 called me later. They called me later on and I have to be on
- 15 Wednesday or Tuesday, I don't know exactly the day.
- 16 Q Do you know who was called first?
- 17 A I believe Daniel or Yonas. I don't know who's first.
- 18 Q Do you know if -- so you don't know?
- 19 A I don't know exactly who's first, but I believe -- I don't
- 20 know his last name, but Daniel.
- 21 Q Was every one of the 17 -- were they there with you at
- 22 Starbucks?
- 23 A Yeah, all of us.
- 24 Q Do you know who ended up going in and meeting with Nellis
- 25 first?

- 1 A Yeah, Abiy and Dawit.
- 2 Q How did you find out that Abiy was first?
- 3 A We got each other numbers so we called and we talk.
- 4 Q So you were told to come in, you believe -- I think you
- 5 said -- which days you said you think you went in for --
- 6 A I believe Tuesday or Wednesday. I don't know exactly the
- 7 day.
- 8 Q From the time that you left Saturday, how many days did
- 9 you work between Saturday and whatever day you went in to meet?
- 10 A I didn't work Sunday, I didn't work Monday. That was my
- 11 workdays and Tuesday and Wednesday is my day off. So I went to
- 12 -- I believe, I'm not sure because it's long time. Wednesday,
- 13 I went to, I speak Jamie and he told me I'm suspended for --
- 14 since Saturday, I got suspended to -- I go back to work -- it's
- 15 Monday, I believe. I'm not sure, though.
- 16 Q Monday the following week?
- 17 A Yes.
- 18 Q Now, when you say Monday, do you mean Monday of the
- 19 calendar week or some people refer to their first workday as
- 20 Monday. So you said you worked Friday, Saturday, Sunday,
- 21 Monday.
- 22 A From Saturday, I didn't finish my shift, include Sunday,
- 23 Monday, the next Friday, Saturday and Sunday, those five days
- 24 includes Saturday.
- 25 Q Was there anything else -- I know you said that Jamie had

- 1 said one thing. Can you walk me through the conversation of
- 2 what Jamie said to you?
- 3 A I went to the office. He said hi to me and then I said hi
- 4 to him. He ask me about the break. I didn't go -- he told me
- 5 I didn't go even the place, the meeting place because my
- 6 address and my -- because there is a GPS on the car, so it
- 7 shows them where I was. So he thought -- in my house, but my
- 8 friend house and my house, we got the same address. Not the
- 9 same number, but we got the same -- we all on the same street.
- 10 I live on University and my friend, he live on University.
- 11 So he told me I wasn't in meeting, I was in my house.
- 12 That's the purpose, we have to take long break, that's our
- 13 purpose.
- 14 Q He said that or you said that?
- 15 A He told me I wasn't in the meeting. I wasn't even in the
- 16 meeting, I was in my house.
- 17 O What was said after that?
- 18 A And I got a false trip sheet, I didn't write it exactly on
- 19 time because of that. I took long break, I suspended five
- 20 days.
- 21 Q Did he show you the trip sheet? He said you falsified the
- 22 trip sheet?
- 23 A When I went to his office, he got on his hand and I look
- 24 at it.
- 25 Q What, if anything, did he say about the trip sheet?

- 1 A If TA got this, they're going to give me a ticket. That's
- 2 what he said. I got a ticket before and the TA took my trip
- 3 sheet and they give me their own trip sheet. The company
- 4 didn't say anything.
- 5 Q Did the company even ask you about it?
- 6 A Nothing.
- 7 Q Does the TA report things like that to Nellis, if you
- 8 know?
- 9 A The TA, if they pull over you, they're going to check your
- 10 trip sheet and they're going to check your card, but they
- 11 aren't going to ask the company. I don't know, I don't know
- 12 how they work, but I believe if they pull over me, they're
- 13 going to check.
- 14 Q Staying with the meeting with Jamie, who was in the office
- 15 with you when --
- 16 A It was one lady, I don't remember her -- I don't know her
- 17 name either.
- 18 Q Did Jamie -- what did Jamie say, if anything, about what
- 19 would happen if this happened again?
- 20 A The owner was saying he wants us fired, but Jamie, he's a
- 21 nice guy -- he said, "I'm a nice guy, I" -- he keep us because
- 22 the owner, he wants to fire us.
- 23 Q Was it the owner that said that? Who was it that said --
- 24 A Jamie told us. Jamie told me.
- 25 Q Jamie said that the owner wanted --

- 1 A Yeah, the owner, he say -- they want -- he wants fired.
- 2 But he's a nice guy and he convinced not to fire us, that's
- 3 what he said.
- 4 Q Other than the break on February 4th, so not that day, but
- 5 other days that you worked, what kinds of breaks did you take
- 6 during your shift?
- 7 A Most of the time, I'll say I never take my break. Maybe I
- 8 have something to do, maybe I'll take more than an hour, but
- 9 they never say nothing.
- 10 Q Why -- are you required to take breaks?
- 11 A Yeah, I have to sign it, either I took break or not.
- 12 Q On the days that you did not take a break, what would you
- 13 fill out -- what would you put on your trip sheet?
- 14 A I put anytime.
- 15 Q Anytime where?
- 16 A Anytime between 3:00 to 3:00, I put it either 9:00 to
- 17 10:00, 7:00 to 8:00, something like that. I have to fill it
- 18 out. If not, they're going to -- I'm going to sign it the next
- 19 day.
- 20 Q I'm trying to figure out the times that you're writing in
- 21 there. Where is it that you're writing that on your trip
- 22 sheet? I'm going to show General Counsel's 5.
- 23 MR. WINKLER: It's not hers, though, right?
- MR. SMITH: Right. I'm just trying to figure out where on
- 25 the trip sheet she's talking about she puts in the time.

- 1 MR. WINKLER: Okay.
- 2 Q I'm going to show you what's marked General Counsel's 5.
- 3 A We have to put our break right here.
- 4 Q Is there where you were talking about for the times?
- 5 A Yes.
- 6 Q So what is that area of the trip sheet?
- 7 A This is the trip sheet and we have to put our break time
- 8 here.
- 9 Q Thank you.
- 10 MR. SMITH: For the record, I was showing the witness
- 11 General Counsel's 5 and she was motioning to the area of the
- 12 trip sheet, which says "Mandatory One-Hour Lunch," and that
- 13 that was the area of the trip sheet that she was referencing.
- 14 Q So that's what you would record for your break. What
- 15 about any trips that you took during that time? What would you
- 16 put on your trip sheet for any of the trips that you took if
- 17 they happened during that time?
- 18 A I put it on the trip sheet.
- 19 Q Why is it that -- when Nellis requires you to take the
- 20 breaks, why is it that you didn't take the breaks?
- 21 A I have to be at the average.
- 22 Q What kind of average are you talking about?
- 23 A The company has average.
- 24 Q What is the average of, is that book?
- 25 A Yes.

- 1 Q Do you know, what is long hauling?
- 2 A Long hauling, the taxicab already has the price, so when
- 3 we take long hauling, there is a difference in \$10.
- 4 Q A difference in what of \$10?
- 5 A The hotel, like from airport to the hotels and anywhere,
- 6 like it's \$10 ride. I have to take the long route to become
- 7 long hauling.
- 8 Q Do you long haul?
- 9 A I do.
- 10 Q Why do you long haul?
- 11 A Because I have to get the average. If not -- if I'm not
- 12 long hauling, the other person will do long hauling so I'll be
- 13 under average.
- 14 Q During the past year, from now going back 12 months, what
- 15 has Nellis told you about drivers' accidents, if anything?
- 16 A I signed some paper. If it is your fault or not, you have
- 17 to take the class and you have to pay \$59, I believe.
- 18 Q Have you ever been to any Taxicab Authority meetings?
- 19 A Yes.
- 20 Q Where were they?
- 21 A It was Cashman Center.
- 22 Q Did you go to one in February of this year?
- 23 A Yes, end of February.
- 24 Q At the end of February?
- 25 A Yes.

- 1 Q Did you speak up at the meeting?
- 2 A I didn't.
- 3 Q Did any drivers from Nellis speak?
- 4 A Yes.
- 5 Q Who was that?
- 6 A Abiy.
- 7 Q Was there anybody else from Nellis that spoke?
- 8 A Only Abiy.
- 9 Q Do you remember what he said?
- 10 A I don't remember all, but I remember the main points he
- 11 said.
- 12 Q What were the main points that he --
- 13 A He was mentioned about -- first he mentioned about company
- 14 insurance and the long hauling and the medallions. The meeting
- 15 was about medallions. So he was talking about they should not
- 16 -- another taxi or another medallion, that's what he was
- 17 talking about. He was talking about the company insurance.
- 18 When you go -- when we have insurance, they do it every year.
- 19 Like they renew up every year.
- 20 It was some -- they put on the doors or something -- I
- 21 don't know, for English, something -- notice. It said company
- 22 had paid half and the drivers paid half. That's what he
- 23 mentioned about it. When I pay \$79 and he pay -- the company -
- 24 if they say half/half and the company has to be paying \$79.
- 25 That means I pay \$160 a month and the company paid \$160.

- 1 That's what he mentioned about it.
- 2 So the insurance, when you calculate it, the insurance
- 3 will be more than \$300. So we're paying all of it, not the
- 4 company paid. That's what he mentioned about it.
- 5 Q Do you remember anything else that he said?
- 6 A Yeah, the first thing -- when I speak here, I know I'm
- 7 going to get fired, but I don't care. I'm going to talk my
- 8 thing. That's what he said.
- 9 Q Was there anybody from Nellis, management or supervision,
- 10 there?
- 11 A Yes.
- 12 Q Who was that?
- 13 A Jamie, he was there.
- 14 Q Did Jamie speak at the meeting?
- 15 A Yes.
- 16 Q Do you remember what Jamie said?
- 17 A I don't remember, he was saying something but I don't
- 18 remember because I was on the bad side, and the drivers, they
- 19 start screaming something. They give you a chance for -- first
- 20 for driver and the certain key holders, they're going to speak.
- 21 Q Between -- who spoke first between Jamie and Abiy?
- 22 A I don't know exactly, but I believe it was the drivers,
- 23 they talk first. After that, certain key holders, they will
- 24 speak later. I don't know.
- 25 Q Thank you.

- 1 MR. SMITH: I have no further questions.
- 2 MR. WINKLER: Did she give an affidavit to the National
- 3 Labor Relations Board?
- 4 MR. SMITH: No.
- 5 (Long pause)

6 CROSS-EXAMINATION

- 7 Q BY MR. WINKLER: I'm showing you Respondent's No. 5 for
- 8 identification. Do you know what this is, the first page?
- 9 (Respondent Exhibit 5 marked for identification)
- 10 A Yes.
- 11 Q What is it?
- 12 A It's a trip sheet.
- 13 Q On the upper right hand corner, it says for February 4,
- 14 2012, correct?
- 15 A Yes.
- 16 Q There's handwriting at the top that says, "No rides from
- 17 7:00 p.m. to 10:00 p.m." Did Jamie write that?
- 18 A I don't know who write it.
- 19 Q Was that on there when you --
- 20 A No.
- 21 O -- met with Jamie?
- 22 A I don't know, I don't remember.
- 23 Q Okay.
- 24 (Long pause)
- 25 Q Go to the second page please. Do you know what this

- 1 document is?
- 2 A I believe the company printout from the GPS, I'm not sure.
- 3 Q There's a column that says GPS Address and it says 3810
- 4 Las Vegas Boulevard. Do you know what that address is?
- 5 A What is it?
- 6 Q There's a column that says GPS Address. The first address
- 7 is 3810 Las Vegas Boulevard. Do you know where that is? Is
- 8 that where you live or your friend lives?
- 9 A No.
- 10 Q On what street do you live?
- 11 A 8501 West University.
- 12 Q Where does your friend live?
- 13 A I know the apartment, but I don't know the address. He --
- 14 Q What street?
- 15 A He lives Decatur -- on Decatur and Bella Vita, they call
- 16 it apartment, but it's on University Street.
- 17 (Long pause)
- 18 Q Look on the third page please. On the column that says
- 19 GPS Address, there's an address on River Glen Drive, about the
- 20 fifth one down. Is that where either you live or your friend
- 21 lives that you went to on the day of the extended break?
- 22 A The thing is, is my friend, he -- the apartment -- in the
- 23 complex, they had -- because it's big, they have a street, but
- 24 all the addresses is on University.
- 25 (Long pause)

- 1 Q Go to the second to the last page please. It says Warning
- 2 Notice.
- 3 A Okay.
- 4 Q Do you recognize that document, have you seen it before?
- 5 A Yeah, I seen it. I have my signature on it.
- 6 Q It says you took more than a one-hour lunch break?
- 7 A Yes.
- 8 Q You signed it. Is that correct?
- 9 A Yes, sir.
- 10 Q There's a space right in the middle of the page where it
- 11 says, Employee's Statement. There's two places with circles.
- 12 One of them says, "I agree with Employer's Statement," and the
- 13 other one says, "I disagree with Employer's description of
- 14 violation for these reasons." There's a little checkmark where
- 15 it says, "I agree with Employer's Statement." Did you check
- 16 that?
- 17 A Yes.
- 18 Q Yes, you did. Okay, thank you. Look on the last page.
- 19 It also says Warning Notice.
- 20 A Yes.
- 21 Q Do you recognize this document?
- 22 A Yes, sir.
- 23 Q Did Jamie give you this document?
- 24 A Yeah.
- 25 Q This was in the meeting that you had with Jamie. Is that

- 1 correct?
- 2 A Yes, sir.
- 3 Q Go back to the very first page. Again where it says, "No
- 4 rides from 7:00 p.m. to 10:00 p.m.," did Jamie tell you that
- 5 you were -- had no rides for almost three hours?
- 6 A Yes.
- 7 MR. WINKLER: Your Honor, I offer into evidence
- 8 Respondent's 5. I realize it's a duplication of General
- 9 Counsel, however, General Counsel's document is cropped off and
- 10 it doesn't have, "No rides from 7:00 p.m. to 10:00 p.m."
- 11 MR. SMITH: I have no objections, Your Honor.
- 12 JUDGE POLLACK: Alright, Respondent's 5 is received.
- 13 (Respondent Exhibit 5 received into evidence)
- 14 (Long pause)
- 15 Q I just want to show you Respondent's (sic) 29(a). This is
- 16 a letter from the Union to the company.
- 17 A Yes.
- 18 Q Is your name on there?
- 19 A Yes, the second one.
- 20 Q You're pointing to the second one in the left hand row on
- 21 the first page of the document.
- 22 (Long pause)
- 23 Q Have you ever asked for an extended vacation from the
- 24 Employer?
- MR. SMITH: Objection, relevance.

- 1 JUDGE POLLACK: What's the relevance?
- 2 MR. WINKLER: It's going to the Union issue as to show
- 3 that the company is not discriminating against anybody on this
- 4 list and has given them benefits.
- 5 JUDGE POLLACK: Alright, go ahead.
- 6 Q Have you ever asked for an extended vacation from the
- 7 Employer?
- 8 A I don't know. Can you explain it to me please?
- 9 Q Have you taken vacations while you've been with the
- 10 Employer?
- 11 A I just took the money.
- 12 MR. SMITH: Your Honor, I would renew my objection. As
- 13 far as this witness goes, there's no allegation that she was
- 14 discriminated against for any union activity. If we apply this
- 15 benefits argument and arguably anything that the company gives
- 16 Ms. Terefe, whether it's pay, extended vacations, anything like
- 17 that, would arguably go towards that. But any of the union
- 18 activity arose after this incident with the extended break,
- 19 that's the only thing that she's involved in for any alleged
- 20 discrimination against this witness.
- JUDGE POLLACK: Well, I won't let it go too far, but go
- 22 ahead.
- MR. SMITH: Thank you, Your Honor.
- 24 Q I didn't hear the last answer to the last question. Have
- 25 you taken vacations?

- 1 A I've been at Nellis since 2010 and I asked one time to --
- 2 I had five days for my vacation, any other employee, and I got
- 3 only the money because I just needed the money.
- 4 Q Okay.
- 5 A If you're asking about that.
- 6 (Long pause)
- 7 Q On the Monday after the extended break on February 4, you
- 8 said all 17 met at Starbucks?
- 9 A Yes, sir.
- 10 Q That would be all 17 that took part in the work stoppage?
- 11 A I'm sorry, what was the question?
- 12 Q That would be all 17 that received suspensions. Is that
- 13 correct?
- 14 A I believe, yes.
- 15 Q How did you know to meet at Starbucks?
- 16 A Most of us, we call each other, all 17 people.
- 17 (Long pause)
- 18 MR. WINKLER: No further questions.
- 19 MR. SMITH: Briefly, Your Honor.
- 20 **REDIRECT EXAMINATION**
- 21 Q BY MR. SMITH: When you were talking about your friend's
- 22 apartment, is a complex of apartments?
- 23 A Yes.
- 24 Q I'm sorry, is it one apartment building or is it many?
- 25 A It's condominiums.

- 1 O Condominiums?
- 2 A Yes.
- 3 Q Do you know about how many buildings there are in these
- 4 condominiums?
- 5 A It's a lot, it's so big, I don't know.
- 6 Q I think you said there were other streets. Do you know,
- 7 are all the streets -- when you said University, is University
- 8 how you get to the apartments?
- 9 A Let me explain how I understanding this. University
- 10 Street doesn't go straight. Some places will cut and some
- 11 places you can find it. I live on University. When you come
- 12 to Decatur, you're going to get University too. My friend
- 13 house between University -- it's on University, but these --
- 14 even in apartment, they have street to guide people. You know
- 15 what I mean? Do you understand what I'm saying?
- 16 O Yes.
- 17 A That's why I say my friend is -- he lives on University.
- 18 Q Okay. The streets, do you have to go through those
- 19 streets to get to your friend's apartment?
- 20 A Which street? University?
- 21 O Did you go into -- yes, the -- for the condominiums?
- 22 A Always when I come to my house, I took Tropicana and I
- 23 live on Decatur and I'll make left on University. There's a
- 24 light, University, that means it's the apartment.
- 25 Q Okay, but I'm just looking at -- your friend's house, the

- 1 streets that are inside the condominium complex, are all those
- 2 streets also named University, do you know?
- 3 A I don't know.
- 4 Q Okay.
- 5 MR. SMITH: No further questions, Your Honor.

6 COURT EXAMINATION

- 7 Q BY JUDGE POLLACK: Is it in Spring Valley, Nevada?
- 8 A Spring Valley, like Spring Valley.
- 9 MR. SMITH: Your Honor, I don't know if it would help to
- 10 clarify, we would like to clarify outside of the witness'
- 11 presence, but there's a number of areas inside the Las Vegas
- 12 area that are technically Las Vegas but are called other areas
- 13 like Summerlyn or different areas. Like you see Paradise up
- 14 here, I believe if we were to pull this address up, Paradise
- 15 would actually be a Las Vegas address, but Paradise is a
- 16 subarea of Las Vegas, the city.
- 17 I don't know about Spring Valley, if that's an area or
- 18 not, but -- it is? Thank you.
- 19 JUDGE POLLACK: Okay.
- 20 WITNESS: We took radio call from that complex. The
- 21 company took radio call from that apartment.
- 22 JUDGE POLLACK: Any further questions?
- MR. SMITH: No, Your Honor, thank you.
- MR. WINKLER: No, Your Honor.
- JUDGE POLLACK: Okay, that's all.

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- 1 WITNESS: Thank you.
- 2 (Witness excused)
- 3 MR. SMITH: Your Honor, if I could have a few moments to
- 4 excuse the witness?
- 5 JUDGE POLLACK: Off the record.
- 6 (Off record)
- 7 Whereupon,
- 8 YONAS YADESSA
- 9 was called as a witness, by and on behalf of the General
- 10 Counsel, and having been duly sworn, was examined and testified
- 11 as follows:
- 12 JUDGE POLLACK: Please be seated. Please give us your
- 13 name and address for the record.
- 14 WITNESS: My name is Yonash Yadessa.
- JUDGE POLLACK: Could you spell your last name please?
- 16 WITNESS: Y-a-d-e-s-s-a.
- 17 JUDGE POLLACK: And your address please?
- 18 WITNESS: 7812 Summer Hill Point, Las Vegas, Nevada,
- 19 89139.
- 20 **DIRECT EXAMINATION**
- 21 O BY MR. SMITH: Mr. Yadessa, where do you work?
- 22 A At Nellis Company.
- 23 Q How long have you worked there?
- 24 A Four years and nine months.
- 25 Q What do you do for Nellis?

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- 1 A I drive a cab.
- 2 Q In February of 2012, what hours were you working then?
- 3 A Say again please.
- 4 Q Back in February of 2012, what were your hours working at
- 5 Nellis?
- 6 A A 12-hour shift starting at 3:00 a.m. -- I mean 3:00 p.m.
- 7 to 3:00 a.m.
- 8 Q Also in February of 2012, what days of the week did you
- 9 work?
- 10 A Starting Thursday until Monday.
- 11 Q Did you take part in a long break in February 2012?
- 12 A Yes, sir.
- 13 Q Why did you take the long break?
- 14 A There was meeting. Drivers take long break about -- to
- 15 talk about company's additional medallions, so we take that
- 16 break to discussion.
- 17 Q Why was the additional medallions important to you?
- 18 A Because if they got another medallion, they can cut us so
- 19 just get together to ask the TA what they do to stop.
- 20 Q For this long break, what did you do?
- 21 A Just -- I got texts from drivers, so there is no specific
- 22 list but I got a friend of mine to text me, we went to Marcado.
- 23 So I take over there and order food and sit and eat and talk
- 24 about the -- what we going to do.
- 25 Q I believe you said the restaurant was Marcado, or

- 1 something like that. Where is that restaurant at?
- 2 A The restaurant's located Swinson and Twain.
- 3 Q Do you know about how many people were there at the
- 4 restaurant?
- 5 A When we get there, it's not that much, but to the time,
- 6 maybe 200 or more than that, I'm not sure.
- 7 Q Were all those 200 people -- were those Nellis cab
- 8 drivers?
- 9 A No, different company, Nellis, Western, different
- 10 companies.
- 11 Q How did you know they were from different companies?
- 12 A Because taxi, you know, a cab is different kind of color
- 13 and title in the cab.
- 14 Q Where did you see the taxicabs?
- 15 A You know, after like an hour or an hour and a half, we
- 16 just out and then drivers, different company. So when we go
- 17 out of the restaurant, we see a lot of cabs in parking so I
- 18 figure out different company.
- 19 Q So after you got done at the restaurant, what did you do?
- 20 A Nothing, I just standing there and there was a news
- 21 channel coming and ask drivers. So I saw that and I leave.
- 22 Q What did you do when you left?
- 23 A When we left?
- 24 Q Yeah.
- 25 A We just drive all the cabs to head to Stratosphere and

- 1 then just drove Las Vegas Boulevard until -- we honk a little
- 2 bit and we show the people.
- 3 Q How many cabs were driving down Las Vegas Boulevard during
- 4 this?
- 5 A About maybe more than 40 or 50.
- 6 Q After you drove down to Mandela Bay, what did you do?
- 7 A When we get Mandela Bay, I just go to the hotel and try to
- 8 get line and get fare.
- 9 Q Were you able to get a fare?
- 10 A Yes.
- 11 Q What happened after that?
- 12 A I just drove, I just got call from one of my supervisors,
- 13 back to the yard and just stop the evening work. He told me go
- 14 home and call Monday.
- 15 Q Do you remember the supervisor's name?
- 16 A I'm not sure his last name, but his first name is August.
- 17 Q Do you remember what time August called you?
- 18 A Around 10:00.
- 19 Q How did he call you?
- 20 A By my cell phone.
- 21 Q After he called you and told you to -- had that
- 22 conversation with you, what did you do?
- 23 A I ask him why, he told me just come back and we'll --
- 24 Monday and then he told me.
- 25 Q What did you do after that?

- 1 A After I drove to Castona, I just drive to the gas station
- 2 and gas up the car and get the medallion to give to the
- 3 dispatcher. I took my paperwork, drove the money I make and
- 4 then I just left. Then I saw a few guys, a few drivers. They
- 5 called my dispatcher and supervisor to go home.
- 6 Q When you got back to the yard, did you talk to anybody
- 7 from Nellis when you got back?
- 8 A I didn't.
- 9 Q Was August at the yard when you got back?
- 10 A Yeah.
- 11 Q Did you talk to August?
- 12 A Yeah, I just told August what happened but he didn't know
- 13 nothing but he told us take off and whatever and call Monday or
- 14 something.
- 15 Q If I can ask you to speak up a little bit when you talk so
- 16 that the court reporter can hear you.
- 17 A Okay.
- 18 Q Who was there to drive your cab after you took it back?
- 19 A I didn't see nobody. You mean the day driver or --
- 20 Q Was there anybody there that took your cab out after you
- 21 returned it to Nellis?
- 22 A No, because it's not shift change.
- 23 Q Done with Saturday, what was the next thing that happened
- 24 with you?
- 25 A Take -- I take off Sunday and then Monday we get phone

- 1 from friends, they said suspend like me. They get together and
- 2 come to the yard to talk about it or to ask what's going on.
- 3 When our supervisor come out and we didn't call you, so you
- 4 have to come back when we get call, he told us. Then we leave.
- 5 Q When you said the 17 got together, where did you get
- 6 together at?
- 7 A Starbucks, the one Tropicana and Decatur.
- 8 Q What days of work did you end up missing?
- 9 A I think Saturday a few hours and Sunday.
- 10 Q Did you end up working Monday?
- 11 A Yes.
- 12 Q What happened when you returned to work Monday, if
- 13 anything?
- 14 A Before I start my shift, the supervisor told me talk to
- 15 office, go see Jamie.
- 16 Q What happened there?
- 17 A I get in the office, talk to Jamie and they explained to
- 18 me I break the rule, take long hour break. So they explain to
- 19 me what I do and then I think I signed no more take long hour
- 20 break.
- 21 Q When you signed that, it was true that you had taken more
- 22 than an hour break, wasn't it?
- 23 A Yes, sir.
- 24 Q Did you have to sign the sheet?
- 25 A Yes, I sign.

- 1 Q Did they say you had to sign it?
- 2 A Yeah, I break Nellis Company rules, take a long hour
- 3 break, so I sign.
- 4 Q During this conversation, did Jamie say anything else to
- 5 you?
- 6 A Yeah, he explain to me about what I do, that it's a
- 7 company rule, so the company rule takes one-hour break. I take
- 8 more than one hour, so -- I don't remember because long time,
- 9 but we discuss about it.
- 10 Q Have you taken breaks longer than an hour before?
- 11 A Yes.
- 12 Q What kind of breaks have you taken longer than an hour?
- 13 A It's not usually, but when friends does a party or
- 14 something when I was work, I take one hour or one hour and a
- 15 half break because I see them.
- 16 Q When you took any of these longer breaks, longer than an
- 17 hour, what kind of discipline did you get because of it?
- 18 A I never get something because of break.
- 19 Q Do you write down that you take an hour break on your trip
- 20 sheets each day?
- 21 A Yes.
- 22 Q How often do you write that on your trip sheets?
- 23 A All the times.
- 24 Q Why do you -- do you always take your hour break?
- 25 A No, not really.

- 1 Q Why do you write the hour break if you're not taking the
- 2 break?
- 3 A Because the trip sheets say or the company says it's
- 4 mandatory one-hour break.
- 5 Q During the past year, from this point going back 12
- 6 months, what did Nellis tell you about accidents, if anything?
- 7 A They didn't say nothing, but -- I'm not sure exactly, but
- 8 if you got an accident, it's your fault, you take a safety
- 9 class and you pay that class. We sign some note.
- 10 Q While you were driving down Las Vegas Boulevard with the
- 11 other cabs that were in the long break -- I'll withdraw the
- 12 question.
- 13 MR. SMITH: I have no further questions, Your Honor.
- MR. WINKLER: Did he give an affidavit to the NLRB?
- 15 MR. SMITH: No.
- 16 MR. WINKLER: Can we stipulate that his name appears on
- 17 General Counsel 29, the letter from the Union in the second
- 18 column, no. 3?
- 19 MR. SMITH: Yes, I'd agree to that stipulation.
- 20 (Long pause)
- 21 CROSS-EXAMINATION
- 22 Q BY MR. WINKLER: I'm showing you now Respondent's No. 6
- 23 for identification. Do you recognize that document?
- 24 (Respondent Exhibit 6 marked for identification)
- 25 A Yes.

- 1 Q Is it your trip sheet for February 4, 2012?
- 2 A Yes.
- 3 Q Where it says Mandatory Lunch Hour, you actually put in
- 4 the time there, correct?
- 5 A Yes, sir.
- 6 Q Toward the top, it says "No rides from 7:59 p.m. to 9:55
- 7 p.m., two-hour lunch." Do you recall that being there when --
- 8 did Jamie -- when you met with Jamie, did he tell you that you
- 9 had taken a two-hour lunch with those time periods?
- 10 A Yes.
- 11 Q Okay. Go to the third page. Do you recognize this
- 12 document?
- 13 A Yes, I do.
- 14 Q This is the warning notice you got from Jamie. Is that
- 15 correct?
- 16 A Yes.
- 17 Q You signed it?
- 18 A Yes, I do.
- 19 Q Right in the middle there's a -- it says Employee's
- 20 Statement. Do you see that?
- 21 A Yes.
- 22 Q It's either a circle to check for "I agree with Employer's
- 23 Statement," or one with "I disagree with Employer's
- 24 description." The one that says "I agree with Employer's
- 25 Statement" is marked. Did you mark that?

- 1 A Yes.
- 2 MR. WINKLER: Your Honor, again, on the first page of
- 3 Respondent's No. 6, it's the same as General Counsel's,
- 4 however, the very top has actually been cropped off. It looks
- 5 like that's been cropped off on a number of them. I'll get
- 6 testimony from Jamie Pino that would actually establish that he
- 7 had that written down there at the time he met with each
- 8 employee. In any event, I offer Respondent's 6.
- 9 MR. SMITH: I have no objections. In looking at
- 10 Respondent's 6 compared to General Counsel's 26, they're both
- 11 cropped off in the same way. But I have no objections to the
- 12 introduction of Respondent's 6.
- 13 JUDGE POLLACK: Alright, Respondent's 6 is received.
- 14 (Respondent Exhibit 6 received into evidence)
- 15 (Long pause)
- 16 Q On February 4, you went to a restaurant on Swinson and
- 17 Twain. Is that correct?
- 18 A Yes, sir.
- 19 Q How did you know to go to that particular restaurant?
- 20 A I got texts from friends.
- 21 O Were those friends from Nellis Cab or a different cab
- 22 company?
- 23 A Nellis Cab Company.
- 24 Q On that Monday, you said you met with 17 people that had
- 25 been suspended and you got together at Starbucks.

- 1 A Yes, sir.
- 2 Q How did you know to meet at Starbucks?
- 3 A Because just call each other and then get together and go
- 4 to talk to the Nellis Company.
- 5 Q Did you call any of your friends to tell them to relay the
- 6 message to be there?
- 7 A I just get call.
- 8 Q Okay.
- 9 (Long pause)
- 10 MR. WINKLER: I have no further questions.
- 11 MR. SMITH: No questions, Your Honor.
- 12 JUDGE POLLACK: Okay, that's all. Thank you.
- 13 (Witness excused)
- MR. SMITH: If I could have a moment to excuse the
- 15 witness?
- JUDGE POLLACK: Off the record please.
- 17 (Off record)
- 18 Whereupon,
- JAMIE PINO
- 20 was recalled as a witness, by and on behalf of the General
- 21 Counsel, and having previously been duly sworn, was examined
- 22 and testified as follows:
- JUDGE POLLACK: You're still under oath.
- 24 WITNESS: Yes, sir.
- 25 **DIRECT EXAMINATION**

5900 Nieman Road, Suite 200 Shawnee, KS 66203 (913) 422-5198

- 1 Q BY MR. SMITH: Mr. Pino, Nellis Cab has a website, don't
- 2 they?
- 3 A Yes.
- 4 Q What I'm waiting to show would be a live shot of the
- 5 website. I'm going pass out what's marked as General Counsel's
- 6 33.
- 7 (General Counsel Exhibit 33 marked for identification)
- 8 (Long pause)
- 9 Q Mr. Pino, do you recognize that as the website for Nellis
- 10 Cab Company?
- 11 A To be honest, I've never seen it, but if it says Nellis
- 12 Cab, it's our website.
- 13 MR. SMITH: Your Honor, if I could have a moment for the
- 14 computer to get up, I can travel to the website so counsel can
- 15 see it. Hopefully we can get a stipulation to this so I can
- 16 move into the next questions.
- 17 MR. WINKLER: I've never seen the website either. I would
- 18 just go on what the witness is saying. I mean, if you've got
- 19 something to show me, I'll look at it, but I've never seen this
- 20 before. I don't -- you represented it's the website, I don't
- 21 doubt it, but I'm not really in a position to stipulate to
- 22 that.
- 23 MR. SMITH: That's what I want the computer for, to be
- 24 able to demonstrate that.
- 25 (Long pause)

- 1 MR. SMITH: While we're waiting for that, I'm going to
- 2 hand out also what's General Counsel's 34(a) through (d).
- 3 (General Counsel Exhibit 34(a) through 34(d) marked for
- 4 identification)
- 5 Q In looking at General Counsel's 34(b), is that a picture
- 6 of Nellis Cab Company's building?
- 7 A Yes, sir.
- 8 Q Is that the Nellis Cab Company garage?
- 9 A Yes, sir.
- 10 Q And then looking at 34(c), is that representative of the
- 11 types of cabs that Nellis Cab operates?
- 12 A Some of them, yes.
- 13 Q Then I believe there's also some cabs on 34(d), Nellis
- 14 Cabs still have cabs like that?
- 15 A Yes.
- 16 Q Now, do you know --
- 17 MR. SMITH: Actually, I can show counsel this. This is
- 18 their website.
- 19 Q I asked you some questions earlier and actually I'll wait
- 20 and --
- 21 MR. SMITH: If I could have a moment off the record, Your
- 22 Honor? I want to show --
- JUDGE POLLACK: Off the record please.
- 24 (Off record)
- 25 Q Mr. Pino, while we were off the record, I showed you the

- 1 webpage for -- that is represented in General Counsel's 33. Is
- 2 that right?
- 3 A Yes.
- 4 Q I believe you stated that you recognized one of the names
- 5 on the webpage.
- 6 A Yes.
- 7 Q What name was that?
- 8 A Adrien Suskavachen. I know he is the one who created our
- 9 webpage.
- 10 Q Do you know how often he updates the webpage?
- 11 A I have no idea.
- MR. SMITH: Your Honor, I'm done with 33, I would offer it
- 13 or offer to take judicial notice of 33. It's available on the
- 14 public website.
- 15 JUDGE POLLACK: 34?
- MR. SMITH: 34, I'm going to ask a couple of questions
- 17 about.
- 18 MR. WINKLER: I don't doubt that it's on the website, but
- 19 I'm going to object to relevance unless you're --
- 20 MR. SMITH: I do believe the relevance is going to appear
- 21 within the next two documents. The homepage, honestly, I
- 22 really -- there's no more questions I'm going to ask about
- 23 other than this is the page that you access when you access the
- 24 Nellis Cab's webpage. This is where you use to link to other
- 25 pages, including 34.

- 1 JUDGE POLLACK: Okay.
- 2 MR. WINKLER: Alright, I would object to 34 based on
- 3 relevance if you're going to offer it now. You might be asking
- 4 questions that make it relevant, I don't know.
- 5 MR. SMITH: I'm not offering 34 right now. I have some
- 6 questions yet about 34.
- JUDGE POLLACK: Okay, go ahead.
- 8 MR. SMITH: Thank you.
- 9 Q BY MR. SMITH: Now, when we're looking at 34, the cabs
- 10 that are identified there, I believe that that's -- it
- 11 references its 2010 cabs.
- 12 A I couldn't tell you. The pictures, you mean?
- 13 Q Yes.
- 14 A I couldn't tell you by looking at a picture, no.
- 15 Q The models that are there, do you recognize are they newer
- 16 models?
- 17 A I can see the Caravan, a Dodge Charger, and I see a Dodge
- 18 300.
- 19 Q The Charger, isn't that one of the newer models for
- 20 Chrysler?
- 21 A Well, what is new to you? I mean, they built this in
- 22 2007.
- 23 Q Okay. So you don't know about the year --
- 24 A Right.
- 25 Q -- on the picture? Now, when we had discussed yesterday -

- 1 we were talking about gas costs. We -- I believe you said
- 2 that Nellis pays for the gas for -- that drivers don't pay. Is
- 3 that right?
- 4 A That is correct.
- 5 Q How long has that been?
- 6 A I think it's always been like that, it's just that we
- 7 changed the format of paying daily cash, before they used to
- 8 pay cash daily. I think it's always been like that.
- 9 Q Just so I make sure I understand, you think it's always
- 10 been that Nellis Cab pays for the gas?
- 11 A Correct.
- 12 Q If you can refresh my memory, how long have you been at
- 13 Nellis Cab?
- 14 A 22 to 23 years.
- 15 Q So for the 22 or 23 years you believe that Nellis Cab has
- 16 paid for gas during that time?
- 17 A I don't know if there was something different. As I told
- 18 you yesterday, I'm not privy to the formula, so I could not
- 19 tell you for sure that it has always been like that. I know
- 20 now it's like this, since we went into checks.
- 21 Q I'm sorry --
- 22 A Since we went to payroll checks, before we used to pay
- 23 cash every day.
- 24 Q Do you know how long you've been in the payroll checks?
- 25 A I think it started about seven years ago.

- 1 Q So since at least then, for at least the last seven years
- 2 --
- 3 A Yes.
- 4 Q -- Nellis has paid for all the gas?
- 5 A Yes, sir.
- 6 (Long pause)
- 7 MR. SMITH: I've just handed out what's marked as General
- 8 Counsel's 35. I can show the witness and counsel from this
- 9 page that you click on employment opportunities. If you want
- 10 me to show you and the witness at the same time, I can do that.
- 11 (General Counsel Exhibit 35(a) and 35(b) marked for
- 12 identification)
- 13 MR. WINKLER: Is it in this document?
- 14 MR. SMITH: It's --
- 15 WITNESS: 35?
- 16 MR. SMITH: Yes, it's in 35. But I'm showing you that I
- 17 can get to that page from Nellis' page.
- 18 Q Do you know why the Nellis Cab webpage -- if Nellis has
- 19 paid for the gas for the drivers for that period of time, why
- 20 the webpage mentions that drivers only pay 50% of their gas?
- 21 A This is wrong. Why they did it? I don't know, but this
- 22 is wrong.
- 23 Q Does this webpage, if you're looking at 35(b) -- actually,
- 24 it's got the same webpage.
- MR. SMITH: With that, Your Honor, I would like to offer

- 1 33, 34(a) through (d), 35(a) and (b), even if it's taking
- 2 judicial notice that this is the publicly available website for
- 3 Nellis Cab. The witness has identified the person that
- 4 maintains the website.
- 5 MR. WINKLER: I'm going to object just on relevance.
- 6 We've gone over a lot of matters in the last day and a half
- 7 that I don't think are relevant, but I haven't objected. But I
- 8 just don't understand the relevance of this to begin with, so
- 9 I'm going to object on relevance.
- 10 MR. SMITH: Your Honor, as far as relevance goes, I expect
- 11 that Respondent is going to argue that the drivers' conduct was
- 12 unprotected and, in part, argue that the drivers basically
- 13 hijacked the cars or kept them out of service and went out and
- 14 drove, using the company's gas as one of the subparts of the
- 15 argument to say that this was -- this conduct was unprotect.
- I believe there's a question of fact as to whether or not
- 17 the drivers actually do contribute part of the gas or not.
- 18 JUDGE POLLACK: You're going to need testimony on that
- 19 point because what you got from the website he says is wrong.
- 20 MR. SMITH: Your Honor, then I'd like to request a
- 21 Subpoena Duces Tecum for the individual named on the webpage,
- 22 this Adrien Suskavachen, and that the witness has already
- 23 identified as the person that maintains the website. I'm
- 24 sorry, a Subpoena Ad Testificandum.
- JUDGE POLLACK: I don't like the delay it's going to

- 1 cause.
- 2 MR. WINKLER: Well, I guess you don't have any authority
- 3 not to give the subpoena, but you certainly have the authority
- 4 not to grant a continuance and delay. Even if it's true that
- 5 the driver pays half and the company pays half, the legal
- 6 argument would be the same that he brought up. I just don't
- 7 see the relevance.
- 8 MR. SMITH: The alternative would be administrative
- 9 notice. It's something that's easily identifiable and easily
- 10 found. It's publicly available.
- JUDGE POLLACK: Well, even if I receive it, the only
- 12 testimony on this point is this witness who says it's not
- 13 correct.
- 14 MR. SMITH: I do believe there's one other witness. I
- 15 believe Mr. Amede also testified to it also.
- 16 JUDGE POLLACK: Alright, well, I want to avoid the delay.
- 17 So for that purpose, I'll receive --
- 18 MR. SMITH: Thank you, Your Honor.
- 19 JUDGE POLLACK: -- receive the documents.
- 20 (General Counsel Exhibits 33, 34(a) through 34(d) and 35(a) and
- 21 (b) received into evidence)
- 22 MR. SMITH: I have no further questions, Your Honor.
- 23 Thank you.
- JUDGE POLLACK: That's all for now. Thank you.
- 25 (Witness excused)

- 1 MR. SMITH: With that, General Counsel rests.
- JUDGE POLLACK: Okay.
- 3 MR. WINKLER: I'd like a few minutes, Your Honor, if I
- 4 could?
- 5 JUDGE POLLACK: Off the record please.
- 6 (Off record)
- 7 JUDGE POLLACK: Back on the record.
- 8 MR. SMITH: I've recalled Mr. Pino to the stand.
- 9 Whereupon,
- 10 JAMIE PINO
- 11 was recalled as a witness, by and on behalf of the Respondent,
- 12 and having previously been duly sworn, was examined and
- 13 testified as follows:
- 14 DIRECT-EXAMINATION
- 15 Q BY MR. WINKLER: Mr. Pino, looking at General Counsel No.
- 16 11 --
- 17 A Got it.
- 18 Q Would you take a look at the second page of that document?
- 19 A Yes.
- 20 Q Is there some writing at the top of that document?
- 21 A Yes.
- 22 Q Is there anything that designates the time they took and
- 23 what the time was?
- 24 A Yes.
- 25 Q What does it say?

- 1 A I wrote here, "No rides from 7:00 to 9:48 p.m., two and a
- 2 half hour lunch."
- 3 Q Was that writing on there when you met with this employee?
- 4 A Yes, it was.
- 5 Q Is that true for every document when you met the 17 where
- 6 you put the time there at the top?
- 7 A Yes.
- 8 Q You obtained that from the GPS reports that's in the
- 9 documents. Is that accurate?
- 10 A Yes.
- 11 Q On that second page, there's a reference to MP. What does
- 12 that stand for?
- 13 A That is one of the time restricted shifts we have. MP is
- 14 12:00 noon to 12:00 a.m.
- 15 Q Some of your shifts are 24 hours a day, but the MP, the
- 16 noon to midnight, is there a corresponding midnight to noon?
- 17 A No.
- 18 Q Go to the next one in order, No. 12.
- 19 A Okay.
- 20 Q The same question, is there any writing on the trip sheet
- 21 -- any of your handwriting designating the amount of time they
- 22 took off?
- 23 A Yes, it is, I wrote on this one, Exhibit 12(b), "No rides
- 24 from 7:00 p.m. to 9:55 p.m., two and a half hour lunch with no
- 25 rides."

- 1 Q Again, what shift is designated there?
- 2 A That is designated MP, which is 12:00 noon to 12:00
- 3 midnight.
- 4 Q Go to the next one in order, No. 13.
- 5 A Go ahead.
- 6 Q Is there any -- on the trip sheet, is there any writing by
- 7 you on the trip sheet at the top?
- 8 A Yes, it is.
- 9 Q Referring to the amount of time taken off?
- 10 A That is correct.
- 11 Q What is that time?
- 12 A "No rides from 7:00 p.m. to 9:00 p.m." This is also a
- 13 12:00 to 12:00 shift.
- 14 Q Designated by the MP?
- 15 A Yes.
- 16 Q Okay.
- 17 A In other words, this shift is over at midnight.
- 18 Q Okay. By the way, on -- let's go to the next one in
- 19 order, No. 14. Do you have any handwriting up there?
- 20 A Yes, I do.
- 21 0 What is that?
- 22 A "No rides from 6:59 p.m. to 9:26 p.m., two and a half hour
- 23 lunch."
- 24 Q Again, that's your handwriting?
- 25 A It is.

- 1 Q Is there a designation by the shift?
- 2 A Yeah, this is nightshift mid-shift, which is 3:15 p.m. to
- 3 3:15 a.m.
- 4 Q How is it designated in that note?
- 5 A Because it's NM right next to it.
- 6 Q NM?
- 7 A NM means mid-shift.
- 8 Q Okay. The next one in order, what is that, 15?
- 9 A Yep.
- 10 Q Same question with the trip sheet, do you have any
- 11 handwriting designating the time taken off?
- 12 A Yes, this one, I wrote, "No rides from 7:20 p.m. to 9:00
- 13 p.m., and this is night mid-shift, 3:15 p.m. to 3:15 a.m.
- 14 Q Again, what's the designation description on there?
- 15 A NM.
- 16 Q NM?
- 17 A Yeah.
- 18 Q Okay. What number was that?
- 19 A 15.
- 20 Q No. 16, the same question.
- 21 A That's my handwriting, "No rides from 7:11 p.m. to 9:09
- 22 p.m., two-hour lunch."
- 23 Q There's an NL for the shift. What does that stands for?
- 24 A That means this is a night late shift, which runs from
- 25 3:30 p.m. to 3:30 a.m.

- 1 Q Okay. On the first page of that document, there's a space
- 2 for employee's statement.
- 3 A Yes.
- 4 Q It's checked, "I agree with Employer's statement."
- 5 A Yes, it is.
- 6 Q Wherever that appears, if either one is checked on any of
- 7 these documents for the 17, who would be the one checking that,
- 8 you or the employee?
- 9 A The employee. They have a --
- 10 Q That's fine.
- 11 A -- choice.
- 12 Q Right. 17, again, what did you write on the top of the
- 13 trip sheet?
- 14 A "No rides from 7:23 p.m. to 9:06 p.m., two-hour lunch."
- 15 O That shift is NL. What does that mean?
- 16 A Night late, 3:30 p.m. to 3:30 a.m.
- 17 Q Go to 18, General Counsel 18. On the, I think, third page
- 18 would be the trip sheet. There's some writing there about
- 19 rides, the time amount and the amount of time for lunch. What
- 20 did you write?
- 21 A I wrote, "No rides from 7:14 p.m. to 9:52 p.m., almost
- 22 three-hour lunch."
- 23 Q The shift is NL.
- 24 A That's night late shift, 3:30 p.m. to 3:30 a.m.
- 25 Q The next one is 19. That is a trip sheet and any writing

- 1 by you as far as --
- 2 A Yes.
- 3 Q -- the ride times?
- 4 A "No rides from 6:52 p.m. to 9:11 p.m., two hours lunch."
- 5 Do you want me to read everything that I wrote here or just
- 6 that?
- 7 Q Just that.
- 8 A Okay.
- 9 Q This is what I'm looking for.
- 10 A Because I wrote all the other stuff too.
- 11 Q Okay. You wrote that either before or after your meeting
- 12 with the employee?
- 13 A No, no, this was written before I met with them.
- 14 Q Okay.
- 15 A This is a night late, 3:30 p.m. to 3:30 a.m.
- 16 Q Let's look at 21.
- JUDGE POLLACK: Did you mean to skip 20?
- 18 MR. WINKLER: Did I? I'm sorry.
- 19 Q I'm sorry, 20.
- 20 A I don't have 20.
- 21 JUDGE POLLACK: Here.
- 22 WITNESS: Okay.
- 23 Q Again on the trip sheet any of your writing concerning the
- 24 ride times and lunch?
- 25 A "No rides from 7:43 p.m. to 9:43 p.m., two-hour lunch."

- 1 Q What's the shift on this?
- 2 A This is night early shift, which runs from 3:00 p.m. to
- 3 3:00 a.m.
- 4 Q And that's designated by NE, correct?
- 5 A That is correct.
- 6 Q No. 21.
- 7 A "No rides from 6:54 p.m. to 8:57 p.m., two-hour lunch."
- 8 Q The shift says N2, what is that?
- 9 A Okay, this is a special time restricted shift, which
- 10 starts at 2:00 p.m. and end up at 2:00 a.m. So the guys --
- 11 2:00 a.m. is the end of their shift.
- 12 Q No. 22, the third page is the trip sheet.
- 13 A Yes, "No rides from 7:00 p.m. to 10:00 p.m."
- 14 Q The shift is NM, which --
- 15 A It's a night mid-shift, which starts at 3:15 p.m. and end
- 16 up at 3:15 a.m.
- 17 O General Counsel No. 23.
- 18 A I wrote, "No rides from 7:33 p.m. to 9:40 p.m., two and a
- 19 half hour lunch." This is a night late shift, which starts at
- 20 3:30 p.m. to 3:30 a.m.
- 21 Q Let's go to General Counsel 24 and look at the first page
- 22 where it says Employer Statement. In large, capital letters,
- 23 it says, "WAIVED." Who wrote that?
- 24 A I did.
- 25 Q Can you explain that?

- 1 A There was a lot of research going on with these drivers
- 2 and I wrote on the bottom that he did take his lunch at home,
- 3 and then he went to the airport. When I confirmed that, he was
- 4 not part of the stoppage, the work stoppage. So I always like
- 5 to be fair and he didn't deserve me to give him a written
- 6 warning. That's why I put Waived.
- 7 Q But he had already been suspended for a day on the weekend
- 8 before he --
- 9 A Correct.
- 10 Q -- met with you?
- 11 A Yes.
- 12 Q General Counsel 25, the trip sheet, your writing on rides,
- 13 time --
- 14 A "No rides from 7:10 p.m. to 8:58 p.m., two-hour lunch."
- 15 This is also one of the time restricted shifts, which starts at
- 16 2:00 p.m. and ends up at 2:00 a.m.
- 17 Q And that's designated by the N2, correct?
- 18 A N2.
- 19 Q General Counsel 26.
- 20 A Okay. I wrote, "No rides from 7:59 p.m. to 9:55 p.m.,
- 21 two-hour lunch." This is a mid-shift, which starts at 3:15
- 22 p.m. and end up at 3:15 a.m.
- 23 O General Counsel 27.
- 24 A I wrote on this one, "No rides from 7:14 p.m. to 9:11
- 25 p.m., two-hour lunch." This is also a time restricted shift,

- 1 starts at 2:00 p.m. and end up at 2:00 a.m., N2.
- 2 Q Other than Getadegu Woldemariam where you wrote Waived,
- 3 did any of the other 16 disagree with the amount of time that
- 4 you said that they took off?
- 5 A No.

6 (Long pause)

- 7 Q Can you -- can one of your drivers operate taxicab-for-
- 8 hire if it doesn't have a medallion on it?
- 9 A No.
- 10 Q Is that a violation of state law?
- 11 A That is correct.
- 12 Q Do you have extra drivers or an extra board?
- 13 A Yes, I do.
- 14 Q What do you call it?
- 15 A Extra board drivers.
- 16 Q For what hours of the day?
- 17 A For the two shifts, the dayshift and the night shift.
- 18 Q So it covers 24 hours?
- 19 A Seven days a week.
- 20 Q In February of this year, how many night -- how many
- 21 drivers were there on the extra board for nights, roughly?
- 22 A Around 27 to 32, somewhere around there.
- 23 Q Now, if the drivers that went out on this work stoppage
- 24 had left their cabs with their medallions at Nellis and had
- 25 just gone out in their private cars to engate in this two or

- 1 three-hour work stoppage, would you have been able to call the
- 2 extra drivers?
- 3 A If they would've let me know by 7:00 in the afternoon, I
- 4 would most definitely called at least half or maybe fill all
- 5 the shifts.
- 6 Q Well, even when you found out, could you have made calls?
- 7 A When I found that out, yes.
- 8 Q Okay.
- 9 A I found that out before 7:00 that this was a reality. I
- 10 didn't heard about it. Before 7:00, I realized that there was
- 11 guys going and not picking up rides.
- 12 Q But if they took the medallions -- when they had the cabs
- 13 with the medallions with them, were you able to call anybody
- 14 else to drive -- well, you have a bunch of empty cabs sitting
- 15 at the Nellis parking lot, correct?
- 16 A That is my spares, yes.
- 17 Q Okay. If -- could you have used those cabs?
- 18 A Not without a medallion.
- 19 Q So when the 17 -- or the 16 or 17 went on the walkout,
- 20 took their cabs with the medallions, you were not able to get
- 21 replacements or other employees or anybody out there to service
- 22 the public?
- 23 A That is correct.
- 24 Q Okay. Have you ever known of anybody taking -- other than
- 25 this incident, have you ever known of people taking longer than

- 1 hour breaks?
- 2 A Not to my knowledge. I mean, in my company?
- 3 Q In your company.
- 4 A More than an hour lunch, no.
- 5 Q Of the 16 or 17 drivers that went on the walkout, they
- 6 were on different shifts, correct?
- 7 A Yes, as we mentioned here, some of them were on different
- 8 shifts, yes.
- 9 Q Some started at noon, some started at 2:00. Is that
- 10 correct?
- 11 A Correct.
- 12 Q Some started at 3:00. Is that correct?
- 13 A That's correct.
- 14 Q And also 3:15 and 3:30. Is that correct?
- 15 A That is correct.
- 16 Q Why do you have staggered shifts?
- 17 A It's for scheduling purposes. I can't have the whole
- 18 fleet pulling in all at one time into the yard when we do shift
- 19 change. That's number one. Number two is we like to start
- 20 with a shift when other companies are doing shift changes. We
- 21 might be taking care of the public because other companies have
- 22 different hours of shift change.
- 23 Q Okay. Does the fact that you have different shifts affect
- 24 when the lunchtime would be taken?
- 25 A Yes, of course.

- 1 Q In their handbook, it's been described that there's a
- 2 mandatory one-hour lunch, correct?
- 3 A That is correct.
- 4 Q Does it say approximately when those should be taken?
- 5 A We suggest to the drivers to take it in the middle of
- 6 their shift.
- 7 Q That's in the handbook itself, correct?
- 8 A Yes.
- 9 Q Have you ever known a situation like this that happened on
- 10 February 4 where everybody -- 17 drivers would take their lunch
- 11 at the same time and at the same location?
- 12 A No. In all the years in the industry, I have never seen
- 13 something like this because it was very impacting on the
- 14 public. Since we weren't the only company participating in
- 15 this, it was a whole industry, it was very impacting. I've
- 16 never seen something like this, never.
- 17 (Long pause)
- 18 Q Do you normally direct your employees -- well, on a normal
- 19 basis, do you tell employees when they should take their lunch?
- 20 A We always say in the book try to take it in the middle of
- 21 your shift, that's all.
- 22 O But usually there's no direction that they have to take it
- 23 at any particular time. Is that accurate?
- 24 A Yes.
- 25 Q Do you still reserve the right to direct an employee when

- 1 to take a lunch if need to serve the public?
- 2 A I believe so, yes. As an Employer, yes.
- 3 Q Have you, in effect, done that by directing them to go to
- 4 certain locations?
- 5 A Say that again?
- 6 Q Do you understand the question?
- 7 A I don't understand the question.
- 8 Q Have you, in effect, directed employee when to take a
- 9 lunch or when not to take a lunch by directing them to go to
- 10 certain locations?
- 11 A I don't recall that.
- 12 Q Okay.
- 13 (Long pause)
- 14 Q On Saturday nights, can you describe when the busy hours
- 15 are for taxicabs?
- 16 A On any Saturday night or on this particular night that
- 17 this happened?
- 18 Q We'll start with any Saturday nights.
- 19 A Saturday nights is probably the busiest night for
- 20 nightshift. Primetimes on Saturday nights starts anywhere from
- 21 6:30 or 6:00 in the afternoon all the way until 9:00 because
- 22 everybody's either going to shows, dinners, or whatever it is.
- 23 The town moves pretty good. Same thing at 3:00 a.m. in the
- 24 morning, so it is pretty busy Saturdays between those hours,
- 25 and then it starts again around 11:00 and 1:00 for the late

- 1 show breaks that happens all over town.
- 2 Q On this particular weekend, Super Bowl weekend, describe
- 3 the impact on the taxicab companies -- well, in your company.
- 4 MR. SMITH: Your Honor, I would object for relevance.
- 5 Whether or not it's protected strike or not doesn't depend on
- 6 that they have to only do it at certain times of the day or
- 7 non-busy times of the year. I don't understand the relevance
- 8 of this.
- 9 JUDGE POLLACK: I'll allow it. Go ahead.
- 10 A I think this was premeditated by the drivers, and you can
- 11 ask them.
- 12 Q No, just describe what happens on Saturday night on a --
- 13 A They picked the Super Bowl because -- weekend because --
- 14 MR. SMITH: Objection, calls for speculation.
- 15 A -- the Super Bowl weekend is --
- 16 JUDGE POLLACK: Just describe how busy --
- 17 WITNESS: Well, the Super Bowl weekend is one of the
- 18 busiest weekends of the year. That's what I was going to say.
- 19 (Long pause)
- 20 Q General Counsel 29(a), the February 16 letter from the
- 21 Union to the company, do you have that in front of you?
- 22 A I remember the letter, but I don't know where it is in
- 23 here.
- 24 Q Have you ever seen that letter before?
- 25 A Yes.

- 1 Q It's dated February 16, but the certified mail receipt
- 2 shows March 2 on the second page.
- 3 MR. SMITH: Your Honor, if I can ask, I just noticed the
- 4 witness has a notepad here. I don't know if he's testifying to
- 5 it or from it or making notes, but I would ask that the notepad
- 6 be removed.
- 7 WITNESS: I was making notes.
- 8 MR. SMITH: Thank you.

9 (Long pause)

- 10 Q When did you first see it? Well, let me rephrase it. Was
- 11 on or about the time of early March when the certified mail
- 12 receipt showed received?
- 13 A I don't recall exactly, but it was sometime in March.
- 14 Q After you received this letter, did the company have any
- 15 training for what to do in a Union organizing effort?
- 16 A I remember contacting you, the first thing we did. After
- 17 that, you suggested that we should put a supervisor into some
- 18 sort of a Union training, including myself.
- 19 Q Did you go through that training?
- 20 A Yes, sir.
- 21 Q Okay.

22 (Long pause)

- 23 Q On December 28th of 2011, Lana Parke, administrative law
- 24 judge of the National Labor Relations Board, issued a decision
- 25 involving Lucky Cab, which she found that certain discharges by

- 1 Lucky Cab were unlawful. Did you -- were you aware of that
- 2 decision?
- 3 A I heard about it, yes.
- 4 Q Did you talk to anybody at Lucky Cab about it?
- 5 A Yes.
- 6 Q Who was that?
- 7 A I think it was Desiree or -- I can't remember exactly, it
- 8 Desiree or Jason.
- 9 Q At the time we met for the training, were you aware of
- 10 that Lucky Cab decision?
- 11 A Yes.
- 12 Q Did it have any impact on how you would --
- 13 MR. SMITH: Objection, leading, Your Honor.
- 14 JUDGE POLLACK: Overruled. Go ahead.
- 15 Q Did it -- did the knowledge of what happened at Lucky Cab
- 16 have any impact on how you would discipline, or potentially
- 17 discipline, anybody on the list submitted by the Union?
- 18 A Yeah, it raised the flag. We wanted to do things right,
- 19 if that was the case because I only knew about the decision of
- 20 what happened. We want to do things right.
- 21 Q In November of 2011, did you have any conversations with
- 22 Matt Habeger of the insurance company?
- 23 A Yes.
- 24 Q You were here during his testimony today?
- 25 A Yes.

- 1 Q Briefly describe what happened in that meeting.
- 2 MR. SMITH: Your Honor, I would object for hearsay. It
- 3 doesn't fall under one of the exceptions if he's talking about
- 4 what was said in the meeting.
- 5 JUDGE POLLACK: Overruled. Go ahead.
- 6 A We talked about our insurance and we received notice that
- 7 our insurance was going to double, our premiums. We continued
- 8 having meetings and they had a lot of suggestions. The way we
- 9 were operating in the past, we were very -- how can I put?
- 10 They gave us a word for it, we were very giving with the
- 11 drivers, giving them chances after having accidents, which
- 12 impacted into the premiums doubling up.
- So they gave us all kinds of hints about helping us. One
- 14 of them was the Smith System, which we told all the drivers
- 15 that we were going to implement to help us have less frequency,
- 16 less accidents, less severity. So we did talk a lot about it
- 17 to implement new rules.
- 18 Q Do you recall anything said about frequency?
- 19 A Yes, frequency -- they kept saying to us frequency leads
- 20 to severity.
- 21 O Let me show you General Counsel Exhibit 30(a). What is
- 22 that document, first page?
- 23 A This is when we implemented to have the Smith System class
- 24 given to drivers whether they were at fault or not at fault and
- 25 who were leading in frequency.

- 1 Q The words, "at fault or not at fault," are underlined,
- 2 correct?
- 3 A Yes.
- 4 Q Who pays for that class?
- 5 A The drivers.
- 6 Q Regardless of whether they were at fault or not at fault,
- 7 correct?
- 8 A Correct. We purchase the class first, the company does.
- 9 Then when they take it, they pay for it.
- 10 (Long pause)
- 11 Q For 2012, did you change your approach as to what you
- 12 would do if people had accidents?
- 13 A Yes.
- 14 Q Describe that please.
- 15 A We -- when I say "we," I'm talking about me and my general
- 16 manager. We take a look of accidents now and we try to really,
- 17 really search the history of the driver first, the frequency of
- 18 the driver, how long has it been there, change the way we used
- 19 to do things. He only has two, we give him three. It doesn't
- 20 matter anymore. It means -- frequency, if I have a driver that
- 21 has an accident for three weeks in a row and they're very
- 22 minor, I will not react the way I used to react before.
- 23 Right now, we're changing everything and being more
- 24 drastic about how we look at accidents. Most accidents has led
- 25 us to terminate a lot of people this year, the way we're doing

- 1 things now.
- 2 (Long pause)
- 3 Q I'm showing you Respondent's 7 for identification. If you
- 4 take a look at the first page, what is this --
- 5 (Respondent Exhibit 7 marked for identification)
- 6 A This is all the drivers that we have terminated from
- 7 January 1st through July 31st.
- 8 Q Did anybody prepare this under your direction?
- 9 A Yes.
- 10 Q Who was that?
- 11 A My assistant, Sandy.
- 12 Q Sandy? What's her last name?
- 13 A Pineda.
- 14 Q Is she here today?
- 15 A Yes.
- 16 Q Okay. Take a look at the second page. There's a name
- 17 written at the bottom, what is that?
- 18 A That's Peter Alexandrov.
- 19 Q Flipping back to the first page, he would be the top one
- 20 on the column under Driver, correct?
- 21 A That is correct.
- 22 Q On the second page, above that in blue, there's -- can you
- 23 explain what that is?
- 24 A This is our accident file, maintenance, where we record
- 25 all the accidents of each driver. We keep updating this as the

- 1 accident goes along. Sometimes when they're close, the money
- 2 that -- whatever we receive from DB Ford, we keep updating
- 3 this. But it also is a file -- it's a history file of the
- 4 driver.
- 5 Q Okay. I actually see -- okay, it says -- under Driver,
- 6 there's the name of Peter Alexandrov. I think there's ten
- 7 entries there.
- 8 A Right, I can describe them for you. Driver's name, which
- 9 is Peter Alexandrov; the TA number, which is the Taxicab
- 10 Authority driver's license that each driver has to have to
- 11 drive a taxi; the hire date that was hired at Nellis Cab; the
- 12 cab number that was involved in the accident; the research when
- 13 there is a need to do research; and the expense of that
- 14 accident.
- 15 Also, right next to the cab number, there is an F. That
- 16 determines whether it's -- A, for adverse, which means the
- 17 other party was at fault. If it says C, it's company fault.
- 18 Sometimes we have a B where both parties are at 50/50, but not
- 19 in this particular case.
- 20 Q There's Robert Sullivan at the bottom. Is that -- why are
- 21 those names there?
- 22 A Well, because this is the only way that we can -- you ask
- 23 for backup. This is the only way that we can give you backup.
- 24 This is in our own format computer. Mr. Sullivan is no longer
- 25 with us, he --

- 1 Q That was just the next name?
- 2 A That was the next name because it goes -- I don't know if
- 3 you notice, I think it goes by TA number, not by alphabetical
- 4 order when we enter this trip sheet. It goes by TA number.
- 5 Q Okay. If there's more -- on these exhibits, if there's
- 6 more than one name, it's just --
- 7 A That's what we see, yes.
- 8 Q Those are the other names on the screen?
- 9 A Correct.
- 10 Q Okay. Going back to page 1 for Peter Alexandrov, it shows
- 11 a termination date of January 24, 2012. You had your assistant
- 12 prepare that?
- 13 A Yes.
- 14 (Long pause)
- 15 Q Is there backup information for everybody on this list?
- 16 A Yes, there is.
- 17 (Long pause)
- 18 Q I'm showing you Respondent's No. 8 for identification.
- 19 (Respondent Exhibit 8 marked for identification)
- 20 A Yes.
- 21 0 What is this document?
- 22 A This is all the people that had accidents from hire date
- 23 through July 31st, 2012 that is still employed at Nellis Cab.
- 24 (Long pause)
- 25 Q Who prepared this document?

- 1 A My assistant, Sandy Pineda.
- 2 Q If you go to the third page, it would be the print of the
- 3 screen for the first person on the list on page 1.
- 4 A Alemu.
- 5 Q What's that?
- 6 A Alemu.
- 7 Q Okay. On page 3, which is his screen, where does his name
- 8 appear on that screen?
- 9 A The third down -- I mean, it's the first ones.
- 10 Q The first two entries, right?
- 11 A Right.
- 12 Q On the left hand side, there's dates. Is that the date of
- 13 the accident?
- 14 A That is correct.
- 15 O What were those two dates?
- 16 A An accident 8/25/2010.
- 17 Q Is that July?
- 18 A August 25, 2010 is -- had one. June 21st, 2011 and June
- 19 23rd, 2012.
- 20 (Long pause)
- JUDGE POLLACK: I don't see that.
- 22 MR. WINKLER: I'm looking.
- 23 Q Isn't his name the one on top, third one on top?
- 24 A Sorry. I'm looking at Alemu. Sorry.
- 25 Q He has two entries right on top, correct?

- 1 A That's it, two, yes.
- 2 Q What were the dates of those accidents?
- 3 A July 14th, 2012 and July 27th, 2012.
- 4 Q You have this backup information on each one of these --
- 5 A Accidents? Yes.
- 6 Q Yes.
- 7 MR. WINKLER: I'll offer into evidence Respondent's 7 and
- 8 8.
- 9 MR. SMITH: Your Honor, I would like to voir dire the
- 10 witness on both.
- 11 JUDGE POLLACK: Go ahead.
- 12 **VOIR DIRE**
- 13 Q BY MR. SMITH: When these show the costs, like looking at
- 14 Respondent's 7, the third page where it says Amede, where it
- 15 says expenses in the right hand column.
- 16 A How many?
- 17 Q Third page of Respondent's 7, it says Amede in the center
- 18 of the page.
- 19 A Which number are you on?
- 20 Q The one that says R-7 at the bottom.
- 21 A R-7, got it. Okay.
- 22 Q Looking at the far right hand column where it says
- 23 expenses --
- 24 A Yes.
- 25 Q -- that includes the insurance adjuster costs, doesn't it?

- 1 A No.
- 2 Q Okay.
- 3 A Wait a minute, I'm not sure -- I don't know if it does. I
- 4 don't know.
- 5 Q Looking at General Counsel's 31(k), the -- that was the
- 6 Amede termination for the accidents. It shows the insurance
- 7 adjuster costs as being \$392.62.
- 8 A What day of loss was that?
- 9 Q That is for an accident that happened on -- this is dated
- 10 November 17th. That accident, I believe, is around the same
- 11 time. The date of loss is November 25th.
- 12 A Correct.
- 13 Q That's what matches on Respondent's 7 for Amede for that
- 14 date, correct?
- 15 A 11/25th, had an accident and expense or fee is \$392.62.
- 16 Q Can you tell me why when looking at General Counsel's
- 17 31(e), which I'm going to show counsel, shows an amount of
- 18 \$456.25, yet this printout for the accident from April 20th --
- 19 why this printout shows the amount as \$493.05?
- 20 A I think I went over this with you before. An accident has
- 21 a long period of changes. An accident is not a cut and dry
- 22 thing. These figures, like I explained to you before, they
- 23 could change through the time.
- 24 Q So you don't know where the extra -- you're not sure where
- 25 the extra numbers came from, do you?

- 1 A I -- you just told me that this came in -- that it might
- 2 be the DB Ford costs. I don't know unless I look at the paper
- 3 you looked.
- 4 Q I can show you that.
- 5 (Long pause)
- 6 A Okay. Date of loss is 4/20, \$493.05, \$456.25. Yeah,
- 7 there's a discrepancy of \$40 here. I don't know why.
- 8 Q Thank you. Now, when looking at Respondent's 7, the page
- 9 with Amede, he's at the top of the list, yet there's other
- 10 names that are on this list also, correct?
- 11 A That is correct.
- 12 Q So we don't know -- does this list scroll up and down?
- 13 A Yes.
- 14 Q So we can't really tell from this list because there's
- 15 nobody that shows up above Amede what the next entry is above
- 16 that, can we?
- 17 A Why would I want to know that?
- 18 Q Well, you can't tell whether Mr. Amede from this because
- 19 you don't see the name above him, you can't see is he had an
- 20 accident before June 26th --
- 21 A He didn't.
- 22 Q How do you know that from this sheet?
- 23 A Because that's what -- we start from the first accident
- 24 going down the line by date.
- 25 Q But you didn't prepare this sheet, did you?

- 1 A No, but that's how I know it works --
- 2 Q But you --
- 3 A -- because I look at accidents myself.
- 4 Q But you don't -- you can't tell from this sheet whether
- 5 there were prior accidents or not.
- 6 A Let me explain to you how I look at accidents so maybe you
- 7 can understand --
- 8 Q I'm just asking about from this sheet.
- 9 A Right. When you punch a TA number, the first accident
- 10 appears first in the first line. I do this every day, every
- 11 single day, that I work, so I know how this works. The name
- 12 appears in the first accident and then it scrolls down and
- 13 tells me all the accidents. If you look at the dates, it's
- 14 obvious the first accident Mr. Amede had was in 2009.
- 15 Q But you can scroll down from this, can't you?
- 16 A I don't --
- 17 Q Once you have this screen, you can scroll up and down,
- 18 can't you?
- 19 A Yeah.
- 20 Q So you can pull up Mr. Amede and his first accident is
- 21 June 26th, 2009. When you scroll down, that accident goes off
- 22 the screen, doesn't it?
- 23 A Yes.
- 24 Q So you can't tell from this list whether or not all of the
- 25 accidents for Mr. Amede were included in this printout, can

- 1 you?
- 2 A Yes, they were included because that's his first accident.
- 3 I mean, you're trying to tell me that I did something to
- 4 manipulate this?
- 5 Q No, I'm trying to say you can't tell from this sheet
- 6 whether or not everything's included because you can't even see
- 7 the entry above Mr. Amede. Is that right?
- 8 A All I can tell you is that when we do this list, the first
- 9 accidents appear on the top line. That's when you punch his TA
- 10 number. That tells me how many accidents he's got starting
- 11 from the first through the last.
- 12 Q So can you show me on this sheet where it says for Mr.
- 13 Amede that he had -- other than going line-by-line and counting
- 14 eight accidents, can you show me something on this sheet that
- 15 shows me that Mr. Amede had a total of eight accidents without
- 16 having to count each line?
- 17 A Not on this, no.
- 18 Q So just from this sheet alone, I have no way of verifying
- 19 whether there were more accidents when this screen was scrolled
- 20 down, can I?
- 21 A Not for him. There was no more accidents for him.
- 22 O But I can't tell that from the sheet, can I? Just looking
- 23 at just that sheet?
- 24 A Well, that's your opinion.
- 25 Q If you pulled this up and you scroll down, you've already

- 1 told me that the top one disappears. I can't tell from this
- 2 sheet when this printed out because I can't see the next entry
- 3 above June 26th, 2009. So how can I tell that this sheet was
- 4 not printed after you scrolled down?
- 5 A That's your opinion.
- 6 Q I'm asking you.
- 7 A I --
- 8 JUDGE POLLACK: That's enough.
- 9 A I mean, you keep asking me the same question, I keep
- 10 telling you the same answer.
- 11 MR. WINKLER: We can eventually get Sandy in here to
- 12 authenticate and go over each one of these. If she went for
- 13 each accident with each one of these persons, I mean, if you
- 14 really want to. I was trying to avoid extra witnesses.
- MR. SMITH: I think we've got a problem right here,
- 16 though, because this witness didn't prepare this.
- 17 MR. WINKLER: I understand.
- 18 JUDGE POLLACK: He'll bring in the witness who prepared
- 19 it. Go ahead.
- 20 MR. WINKLER: Then I'll withdraw the request to admit them
- 21 at this time and wait until then.
- 22 JUDGE POLLACK: Okay.
- MR. SMITH: Thank you, Your Honor.
- 24 (Long pause)
- MR. SMITH: Your Honor, also if I may, one of the other

- 1 things with this is the documents that have been entered in
- 2 before were more detailed as far as accidents. This is just a
- 3 summary. So I would object as far as that it's not
- 4 representative of what the actual accident file would detail.
- 5 With this, we really can't tell what happened with the
- 6 accident.
- 7 MR. WINKLER: Let me back up and ask another question
- 8 about these documents.

9 CONTINUED DIRECT EXAMINATION

- 10 Q BY MR. WINKLER: When you make a decision to -- for
- 11 discipline for accidents, do you refer to the computer images
- 12 for your information?
- 13 A That screen right there, that's the first thing I do.
- 14 Q Okay.
- 15 (Long pause)
- 16 Q In 2012, have you increased the number of terminations for
- 17 accidents than you have in the past?
- 18 A Yes.
- 19 Q You testified that frequency is one of the issues that you
- 20 look at.
- 21 A Yes.
- 22 Q Is that true regardless of whether it was at fault or not
- 23 at fault?
- 24 A That is correct. That's one of the criteria that I use.
- 25 (Long pause)

- 1 Q Did you discharge Mr. Amede?
- 2 A I did. I made the decision. I actually didn't talk to
- 3 him.
- 4 Q Okay, you made the decision. Okay. On what did you base
- 5 that decision?
- 6 A Frequency and fault.
- 7 Q Okay. General Counsel's 29, the letter from the Union,
- 8 has the list of employees that were part of the organizing
- 9 committee, did you give that list to any of your road
- 10 supervisors?
- 11 A No.
- 12 Q Did you tell any of your road supervisors or any
- 13 supervisor below you, for that matter, who the names were on
- 14 that list?
- 15 A No.
- 16 Q Let's go back to Mr. Amede again. What factors did you
- 17 use in determining to discharge him?
- 18 A Like I say before, frequency, I used the criteria of
- 19 fault, and also I use the criteria of productivity. I look at
- 20 that now.
- 21 Q Okay.
- 22 A Since January. He was -- in the past two months, it shows
- 23 in one of the exhibits he just was going down and he had a
- 24 prime shift. He was going really bad on his productivity. Our
- 25 business is a commission, so I look at that.

- 1 Q So he had frequency of accidents and he didn't have any
- 2 redeeming qualities as far as his recent productivity. Is that
- 3 correct?
- 4 A None.
- 5 Q Did you fire him because of his Union activity?
- 6 A No.
- 7 (Long pause)
- 8 Q Do you have Exhibit 31 in front of you?
- 9 A I was trying to look for it.
- 10 JUDGE POLLACK: Here.
- 11 WITNESS: Okay.
- 12 (Long pause)
- 13 Q Go to the third page of General Counsel Exhibit 31. What
- 14 is that document?
- 15 A Third page is the accident for 4/20.
- 16 Q Who signed that?
- 17 A August.
- 18 Q This is a supervisor accident/incident form, correct?
- 19 A That is correct.
- 20 Q On the left hand column by Fault, it has Yes. What does
- 21 that mean?
- 22 A At fault.
- 23 Q By the driver?
- 24 A Yes, our driver.
- 25 Q Go back to the second page, which is the same document.

- 1 However, it has a note on it.
- 2 A That's my notes, yes.
- 3 Q Okay. It says, "At fault, minor," correct?
- 4 A That's correct.
- 5 Q What does "C/R equals no event" mean?
- 6 A The camera was reviewed and there was no event recorded by
- 7 the camera in our cab.
- 8 Q Okay. Then what else is in that note?
- 9 A That's when Michelle and I would decide to terminate him
- 10 for high frequency after we reviewed everything else, like I
- 11 was telling you before.
- 12 Q Okay, but it reads driver term-high frequency, correct?
- 13 A That is correct.
- 14 Q That's your notes?
- 15 A That's my note.
- 16 Q Okay. So when you made the decision, it was based on the
- 17 supervisor's report, among other things, correct?
- 18 A That is correct.
- 19 Q Okay. It was pointed out in your examination yesterday
- 20 under General Counsel that later on there's an employee --
- 21 excuse me. Later on, there's evidence from supposedly a
- 22 neutral person that indicate that the driver may not have been
- 23 at fault, correct?
- 24 A Yeah, that's -- that happened after the fact, yes.
- 25 Q Okay.

- 1 A And also, I went by DB Ford, not just my supervisor. At
- 2 the time of the accident, DB Ford also thought that he was at
- 3 fault.
- 4 Q Okay.
- 5 (Long pause)
- 6 Q But whether he was at fault or not, still there was a high
- 7 frequency, correct?
- 8 A That is correct.
- 9 (Long pause)
- 10 MR. WINKLER: I have no further questions.
- 11 MR. SMITH: I do have some questions, Your Honor, whether
- 12 you want to proceed now or if you want to stop for lunch. I
- 13 don't think it'll take very long.
- JUDGE POLLACK: Let's break for lunch.
- 15 (Off record)
- 16 JUDGE POLLACK: Back on the record.
- 17 MR. SMITH: Thank you, Your Honor.
- 18 CROSS-EXAMINATION
- 19 Q BY MR. SMITH: Mr. Pino, you had answered some questions
- 20 on direct about the GPS logs that were associated with the long
- 21 break discipline. Now, the fact that a driver doesn't have a
- 22 ride at the time doesn't necessarily mean that they're on a
- 23 break, does it?
- 24 A Not all the time, no.
- 25 Q The GPS log just contains some basic information such as

- 1 the location and speed, etc. My question is, the GPS
- 2 information alone doesn't tell you whether they're on break,
- 3 does it?
- 4 A If they don't have a ride for a long period of time,
- 5 that's what I used.
- 6 Q But don't you have to do a little bit more investigating,
- 7 I think you said, into what happened to see what was the actual
- 8 cause of why there was nothing for a long period of time? In
- 9 other words, you actually looked at this to try to figure out
- 10 what was going on?
- 11 A Correct.
- 12 Q Okay. The fact that the GPS log says VE, that means it's
- 13 not occupied, correct?
- 14 A That is correct.
- 15 Q That doesn't necessarily mean that they were on break at
- 16 the time, unless you've done -- unless you found something
- 17 additional. Is that right?
- 18 A Correct.
- 19 Q Now, the GPS logs that are attached to the discipline
- 20 sheets, are those the same sheets that you used to make your
- 21 comments about the length of the break? In other words, if you
- 22 take General Counsel's 14, for example, you have a note on
- 23 14(b), no rides from this time to that time. Is the GPS log
- 24 that's attached to the discipline that you used to make that
- 25 note?

- 1 A Most likely, yes, because there's two. Remember there's a
- 2 couple of other GPS that were produced, another format of GPS
- 3 report, so I don't know -- I don't see -- 14-what?
- 4 Q 14(c) is the GPS log, 14(b) is the trip sheet.
- 5 A Okay, I got 14.
- 6 Q So when you're looking at (c), was this the trip sheet
- 7 that -- or the GPS log that you used when you wrote down the
- 8 note on the corresponding trip sheet?
- 9 A Yes.
- 10 Q I believe, looking at it, you wrote the break was 6:59 to
- 9:26, and the bottom entry on (c) is 6:59 p.m. with the top
- 12 entry being 9:26, correct?
- 13 A That is correct.
- 14 Q Now, had you noticed any problems with these GPS logs
- 15 before you talked to the drivers?
- 16 A No.
- 17 Q Can you tell me why -- if you go down the list -- well,
- 18 first off, when you're looking at this, there's several entries
- 19 that show a speed. The first one is 1.15. Is that mph?
- 20 A Yes.
- 21 Q But then the driver has, at 9:21, the vehicle's moving at
- 22 16 mph. At 9:16, the vehicle is moving at 10 mph.
- 23 A Yes.
- 24 Q Without more, you can't really tell whether the driver was
- 25 looking for a ride at that time, can you?

- 1 A Well, because -- not really, but the knowledge that I have
- 2 what was going on indicated and this report tells me that at
- 3 the end, and as the witnesses testified here, when they were
- 4 done with the meeting, they went cruising and they were not
- 5 picking up rides because it says Vacant.
- 6 Q But I said, did -- based on this, that's what you wrote
- 7 down on the --
- 8 A That is correct.
- 9 Q -- trip sheet.
- 10 A That is correct.
- 11 Q So when you wrote that comment down on the trip sheet, you
- 12 didn't know what the driver was doing at that time where --
- 13 A Yes, I do.
- 14 Q How did you know that if --
- 15 A Because it was common --
- 16 Q -- you hadn't talked to the driver yet?
- 17 A It was common knowledge from them telling me that after
- 18 they finished Twain and Paradise, they went cruising up and
- 19 down the strip, as they testified themselves, not picking up
- 20 rides.
- 21 Q We're not talking about what they testified to. I'm
- 22 trying to figure out how you got to the point that you wrote
- 23 down the times that they were on break before you ever talked
- 24 to them.
- 25 A Because they were vacant.

- 1 Q But just being vacant doesn't necessarily mean that
- 2 they're on break, right?
- 3 A No.
- 4 Q Okay. So that's one issue. The other thing is, if you go
- 5 down the list, the same thing, which we're looking at 14(c),
- 6 you go down and you hit a time and it says 8:56:22 p.m. It's
- 7 the eighth line down.
- 8 A 8:56 p.m.?
- 9 Q I'm sorry, seventh line. There's almost an hour break in
- 10 the GPS data from 8:56 p.m. until 7:59 p.m.
- 11 A Yes.
- 12 Q What happened during that time?
- 13 A They were at that place, Twain and Paradise, taking their
- 14 break, I assume, one hour break.
- 15 Q Because you wrote this down before you talked to the
- 16 drivers, you had to assume that, didn't you?
- 17 A Correct.
- 18 Q But you didn't ask the drivers specifically about that
- 19 break in time, did you? This was driver, Bekele. You didn't
- 20 ask Mr. or Ms. Bekele what happened during that time, did you?
- 21 A No.
- 22 Q And actually at the 9:01 timeframe, the cab's already
- 23 moving at 29.9 mph.
- 24 A Correct.
- 25 Q So again, we can't really tell -- and the addresses have

- 1 changed at that point by -- I'll rephrase the question. At
- 2 9:01:22, you had both the vehicle is moving and you had a
- 3 change in address, right?
- 4 A Change of place, yes.
- 5 Q Without more information, we don't really know what the
- 6 driver was doing at that time.
- 7 A Looking at this document, no.
- 8 Q Okay.
- 9 A My knowledge, yes, I knew what they were doing.
- 10 Q That was based on an assumption before --
- 11 A All my road supervisors that they witnessed the parade
- 12 after they break on Twain and Paradise, they went cruising up
- 13 and down the strip.
- 14 Q It was based on that assumption is --
- 15 A It's not an assumption, it's a report from my road
- 16 supervisors and industry-wide that they were cruising up and
- 17 down.
- 18 Q That was your basis for writing down the --
- 19 A That is correct.
- 20 Q Now, we'll briefly go through, and it's going to be a very
- 21 similar issue on each. If we're looking at General Counsel's
- 22 20, this is Mr. Hasen.
- 23 A Yes.
- 24 Q In this case, we have four different time segments where
- 25 the vehicle is being driven, starting at 9:28 p.m. Is that

- 1 right?
- 2 A On the top?
- 3 Q Yes.
- 4 A 9:38 p.m., 16.1 mph.
- 5 Q 9:28 is at 46 mph. Is that right?
- 6 JUDGE POLLACK: I'm sorry, which exhibit?
- 7 MR. SMITH: We're looking at (d).
- 8 JUDGE POLLACK: Of 20?
- 9 MR. SMITH: Of 20, yes.
- 10 A Yes.
- 11 Q So starting at 9:28 p.m., the vehicle's already moving and
- 12 there's 30 minutes missing from 9:28 until 8:58. Is that
- 13 right?
- 14 A Yes.
- 15 Q So without more information, we can't tell just by this
- 16 sheet what the driver was doing during that time, can we?
- 17 A Not in the 30 minutes, no, because in the 30 minutes,
- 18 8:58, the car was not moving. At 9:28, the car moved again. I
- 19 can't tell exactly whether he was -- all I know, he wasn't
- 20 picking up rides. This tells me he was not picking up rides.
- 21 Moving is irrelevant to me when I look at these things.
- 22 Q How can we tell for that 30-minute gap or for the hour gap
- 23 in the previous exhibit -- how can we tell from this sheet
- 24 whether or not they were picking up rides?
- 25 A First of all, because the GPS says Vacant. Second of all,

- 1 because they falsified their trip sheets.
- 2 Q Maybe if I make the question clearer because -- how can we
- 3 tell by this sheet whether they were picking up rides for the
- 4 time periods where there's a gap?
- 5 A Because they were vacant.
- 6 Q But the GPS -- can you show me how the information on the
- 7 GPS sheet shows us that they were vacant during those time
- 8 periods for which there's no entry?
- 9 A Because they were stopped. They stopped, zero miles.
- 10 Q But how can I tell that for those -- the entries that are
- 11 missing, how can I tell they were stopped during that time?
- 12 A I don't know.
- 13 Q Understanding what you said about you looked at other
- 14 information, but --
- 15 A Okay.
- 16 Q -- just from the sheets, we can't tell that. Is that
- 17 correct?
- 18 A Well, on certain occasions, like these two examples that
- 19 you showed me, yes.
- 20 Q Then if we look at 19(e) -- just let me know when you're
- 21 on 19(e).
- 22 A Yes.
- 23 Q So the top three entries, you've got the second and third
- 24 entry, the vehicle's moving at about 33 mph, correct?
- 25 A Correct.

- 1 Q Again, we don't really know -- other than the driver's
- 2 moving, the information we have here, it's rather limited to
- 3 what the driver is actually doing.
- 4 A Correct.
- 5 Q Then if you go down the list, you get down to 8:52 p.m.,
- 6 and then the next entry before that is 7:42 p.m. Do you know
- 7 why there's approximately a 50-minute gap there?
- 8 A I have no idea. I don't -- this is -- this equipment is
- 9 integrated in our cabs here in the industry by another -- I'm
- 10 not --
- 11 Q And because --
- 12 A -- a tech person to tell you why.
- 13 Q Okay. So because you hadn't noticed this before, there
- 14 was no way for you to ask them about that specific gap in there
- 15 when you brought them in?
- 16 A Not really, it was obvious because they told me themselves
- 17 when I gave them -- I told there were no rides picked up
- 18 because it tells you right here they were vacant. I did not
- 19 dissect this as you're doing right now because it was obvious
- 20 that they didn't pick up any rides from 7:07 through 9:07.
- 21 They agreed to it, so it was irrelevant to me to dissect this
- 22 as you're doing right now.
- 23 Q This is 19(a), Getachew Haileselassie --
- 24 A Haileselassie.
- 25 Q How much did he say when you brought him in?

- 1 A What's that?
- 2 Q When you brought him -- did you bring him in to discuss
- 3 this sheet?
- 4 A Of course, every one of them.
- 5 Q How much did he say when you were -- when you brought him
- 6 in?
- 7 A How much did he say?
- 8 Q Yes.
- 9 A I couldn't remember. If I tell you -- I can't remember
- 10 how much did he say. All I remember is that I told him that
- 11 you had no rides from 6:52 to 9:11, because I made the note
- 12 there. You falsified the trip sheet and you have to sign this
- 13 written warning, and he agreed.
- 14 Q So is it fair to say that, generally, the drivers didn't
- 15 say much at all when you brought them in?
- 16 A Well, again, I don't -- some of them -- I had a talk with
- 17 them and I can't remember exactly which one it was. I mean,
- 18 there's 17 people here, I deal with 400 drivers. You asked me
- 19 a specific question to remember if he said anything, maybe he
- 20 could've been the one that said something, I don't remember.
- 21 Q Do you remember any one of the 17 saying anything to you
- 22 that was memorable?
- 23 A Yes, I do.
- 24 Q What was that?
- 25 A I remember -- going through all the witnesses that you had

- 1 here, I remember the lady that was here. She said to me that,
- 2 "Jamie, I didn't participate in the meeting. I went home." I
- 3 said, "Well, indirectly, you weren't picking up rides and
- 4 that's a violation of NRS and NIC." I did say that to her. I
- 5 remember her now --
- 6 Q Okay.
- 7 A -- saying that.
- 8 Q Do you remember any of the other drivers, anything
- 9 memorable they said?
- 10 A If I would see their faces, probably, but not right now.
- 11 Q I'm just going to briefly go through some of the other
- 12 things that I've noticed. If we look at General Counsel's
- 13 25(d), this is the discipline for --
- MR. SMITH: If we could have a moment off the record, Your
- 15 Honor, I could probably get a stipulation from counsel and
- 16 avoid all the questions.
- 17 JUDGE POLLACK: Off the record.
- 18 (Off record)
- 19 JUDGE POLLACK: Back on the record.
- 20 Q Mr. Pino, do you have -- was it 25 that I asked you about,
- 21 in front of you?
- 22 (Long pause)
- 23 A 25.
- 24 Q I'm looking at 25(d). Looking at the third to the fourth
- 25 entries, there's a 35-minute gap there. Is that correct?

- 1 MR. WINKLER: Okay, I'm going to object. First of all, in
- 2 your opening statement, you said there was a two to three-hour
- 3 work stoppage. All of your General Counsel witnesses,
- 4 including Mr. Amede, testified to the amount of time they were
- 5 taking and what they were doing and agreed that what was in the
- 6 reports were accurate. The witness has already testified that
- 7 he wrote down and then confronted each person with the amount
- 8 of time they took off. There's only one person that disputed
- 9 it, and that person was waived.
- 10 So I mean, if you're going to show all these little breaks
- 11 in here, for what purpose? Are you contending that these
- 12 people are actually trying to pick up rides in that time period
- 13 that we say they weren't?
- 14 MR. SMITH: First --
- MR. WINKLER: There's no evidence of that from any of your
- 16 witnesses. I mean, this is the kind of case that I thought
- 17 when it first came out that we could get a stipulated issue to
- 18 the Board. But we're starting to go off into areas here that's
- 19 going to -- you made your points, whatever they are, with some
- 20 but I just don't want to continue on into needless territory.
- 21 MR. SMITH: First, I would offer a stipulation as far as
- 22 the records that I would ask. But in response to your
- 23 objection, the witnesses that testified testified they signed a
- 24 warning that says more than an hour break. On Respondent's
- 25 presentation on direct, there was numerous documents that were

- 1 testified as to this note that was put on the warning -- on the
- 2 trip sheet, I'm sorry. These questions went to the basis for
- 3 those notes and raised into question the amount of
- 4 investigation that was done into this -- especially since these
- 5 notes were entered before the drivers were even brought in.
- Now there's also questions as to what went on in the trip
- 7 sheets themselves. So I think there's a basis for presenting
- 8 the testimony, but I'm willing to offer a stipulation as to the
- 9 documents similar to what I've already found and where the
- 10 breaks are at.
- 11 JUDGE POLLACK: Those GPS sheets are already in evidence,
- 12 so --
- 13 MR. SMITH: Yes.
- 14 JUDGE POLLACK: So if you want to argue that, you can
- 15 argue it from what's already in evidence. You've questioned
- 16 him several times now and you're going to get the same answers.
- 17 MR. SMITH: And that's why I didn't plan on asking any
- 18 more questions. I would've just offered a stipulation, Your
- 19 Honor.
- JUDGE POLLACK: You don't need the stipulation, do you?
- 21 You -- the GPS sheets are already in evidence and you can argue
- 22 what you want from those gaps.
- MR. SMITH: Yes, Your Honor.
- JUDGE POLLACK: It seems to me that we're still at the
- 25 same point. The Respondent admits that it suspended these

- 1 employees because they took those long breaks engaging in this
- 2 work stoppage. You contend the work stoppage is protected.
- 3 Respondent contends it's not protected. So I don't see what we
- 4 get by going into the fact that there may be 30-minute gaps in
- 5 the GPS sheets. There's no contention by you that the
- 6 employees were picking up passengers during that time.
- 7 MR. SMITH: I believe you're correct, Your Honor, even
- 8 without the stipulation the records are in evidence and I'll
- 9 move on.
- 10 JUDGE POLLACK: Okay.
- 11 MR. SMITH: Thank you.
- 12 Q BY MR. SMITH: I believe you testified on direct about --
- 13 that the lunch period being in the middle of the shift is a
- 14 suggestion, correct?
- 15 A That is correct.
- 16 Q None of the 17 drivers who were disciplined for the
- 17 suspended break -- or the long break were disciplined because
- 18 their lunch varied from the middle of the shift, was it?
- 19 A No.
- 20 Q So it was solely because of the long break taken together?
- 21 A That is correct.
- 22 O You mentioned some names from Lucky Cab, Desiree and
- 23 Jason. Is that manager, Desiree Dante?
- 24 A Yes.
- 25 Q And is that Lucky Cab owner, Jason Awad?

- 1 A Yes.
- 2 Q I think you said that you didn't remember which one that
- 3 you had talked to. Do you remember since you testified who it
- 4 was that you talked to?
- 5 A I think it was Desiree.
- 6 Q Do you remember what she told you about the case?
- 7 A She didn't discuss the case with me. She just told me the
- 8 results.
- 9 Q Okay. The General Counsel's 30, I'm not going to ask you
- 10 any questions from it, but that was the change, the amendment,
- 11 as far as the Smith Training. Was that an amendment that all
- 12 the drivers signed?
- 13 A All the active drivers, yes, the people that were there.
- 14 Q So it wasn't limited to just the frequent accident
- 15 drivers, was it?
- 16 A No, no, every one of them. It was mentioned again. In
- 17 every shift change, we make announcements that we were going to
- 18 implement this new --
- 19 Q My question was just limited to that.
- 20 A I just --
- 21 MR. SMITH: I have no further questions, Your Honor.
- MR. WINKLER: No further questions.
- JUDGE POLLACK: Thank you.
- 24 WITNESS: Thank you.
- 25 (Witness excused)

- 1 JUDGE POLLACK: Off the record.
- 2 (Off record)
- 3 JUDGE POLLACK: Back on the record.
- 4 Whereupon,
- 5 SANDY PINEDA
- 6 was called as a witness, by and on behalf of the Respondent,
- 7 and having been duly sworn, was examined and testified as
- 8 follows:
- 9 JUDGE POLLACK: Please give us your name and address for
- 10 the record.
- 11 WITNESS: Sandy Pineda. My home address?
- 12 JUDGE POLLACK: Home or business.
- 13 WITNESS: 5490 Cameron Street, Las Vegas, Nevada, 89118.
- MR. WINKLER: Is Respondent's 7 up there?
- 15 (Long pause)
- 16 DIRECT EXAMINATION
- 17 Q BY MR. WINKLER: I'll show you Respondent's No. 7. Can
- 18 you identify this document?
- 19 A Yes.
- 20 Q Who prepared this document, if you know?
- 21 A I did.
- 22 O The title says, Term Drivers for Accidents from 1/1/12
- 23 through July 31, 2012.
- 24 A Correct.
- 25 Q So you prepared the coversheet. Is that correct, the

- 1 first page?
- 2 A Yes.
- 3 Q Taking a look at the second page, what is that document?
- 4 A Those are print screens from my computer that shows all of
- 5 -- particular accidents for each individual.
- 6 Q This would be for Peter -- how do you pronounce that name?
- 7 A Alexandrov.
- 8 Q Going back to -- did you put down all the accidents that
- 9 the -- did you get a printout of all the accidents that that
- 10 particular person had for each one of these individuals?
- 11 A Yes.
- 12 Q Okay. On the first page, the second line, the second line
- 13 is hire date. Does that appear on page 2?
- 14 A Yes, it does.
- 15 Q Frequency, you have the number 10 for him.
- 16 A Correct.
- 17 Q Is that simply a matter of adding the number of accidents
- 18 that are on the printout sheet of the screen?
- 19 A Yes.
- 20 Q Let's go to the termination date. How did you get that
- 21 date?
- 22 A The termination date came from the employee screen.
- 23 Q This screen?
- 24 A No, no, no. It comes from a different screen where I
- 25 would put the TA number in and then it would pop up the

- 1 termination date. It's also in the employee file also.
- 2 Q The employee personnel file?
- 3 A Correct.
- 4 Q We provided the personnel files to the government,
- 5 pursuant to a subpoena for the people on this list?
- 6 A Yes, we did.
- 7 Q For Peter Alexandrov, the last accident he had, I think it
- 8 says January 21, 2012. Is that accurate?
- 9 A Correct.
- 10 Q The term date is January 24, 2012?
- 11 A Correct.
- 12 Q Three days after the accident?
- 13 A Yes.
- 14 Q Were almost all, if not all, the term dates within a few
- 15 days of the last accident?
- 16 A Yes.
- 17 Q Going down to the seventh name, Mario Garcia Pereyra --
- 18 A Yes.
- 19 Q -- has a hire date of what date?
- 20 A 2/13/12.
- 21 Q And a termination date when?
- 22 A 2/23/12.
- 23 Q Ten days later, correct?
- 24 A Correct.
- 25 Q In the reason, it says probation. Do you have a

- 1 probationary period at Nellis?
- 2 A Yes, 90 days.
- 3 Q And there was one accident?
- 4 A Correct.
- 5 Q Going down to Warren Lovelady --
- 6 A Okay.
- 7 Q Going over to the column that says Reason, it says "not
- 8 reported." What does that mean?
- 9 A It means his -- actually, I think it's just his last
- 10 accident, he did not report it.
- 11 Q What's the obligation to report and when you're supposed
- 12 to report?
- 13 A You're supposed to report everything.
- 14 Q At what time?
- 15 A Right after it happens. They have the two-way radio, they
- 16 call dispatch and they report it from there.
- 17 Q Okay.
- 18 A He didn't do that at all.
- 19 (Long pause)
- 20 Q Going to Respondent's No. 8, do you recognize this
- 21 document?
- 22 A I do.
- 23 Q Did you prepare this?
- 24 A I did.
- 25 Q Again, for each employee listed there is a blue screen

- 1 again, correct?
- 2 A Correct.
- 3 Q Did you prepare those screens?
- 4 A I did.
- 5 Q Did you make sure that every accident that person had was
- 6 revealed on that screen?
- 7 A Absolutely.
- 8 Q Now, the first page that's entitled, Frequency of
- 9 Accidents from Hire Date through July 31, 2012, Still Employed,
- 10 was there another criteria? Did there have to be an accident
- 11 in 2012 to be on this list?
- 12 A Yes.
- 13 Q So if somebody had asked them prior to January 1, 2012 and
- 14 didn't have an accident in 2012, their name wouldn't be here,
- 15 even though they might've had accidents in the past?
- 16 A Correct.
- 17 Q So this is basically everybody that had an accident after
- 18 January 1 up through July 31, and they're still employed as of
- 19 July 31st?
- 20 A Correct.
- 21 Q On the -- the hire date, again, can be determined from the
- 22 screen?
- 23 A Correct.
- 24 Q Frequency can be determined from the screen?
- 25 A Correct.

- 1 O Fault can be determined from the screen?
- 2 A Correct.
- 3 Q And not at fault can be determined from the screen?
- 4 A Yes.
- 5 MR. WINKLER: I offer into evidence Respondent's No. 7 and
- 6 8.
- 7 MR. SMITH: Your Honor, although I don't have the same
- 8 objections that I had earlier because the witness has clarified
- 9 some of the documents, my underlying objections as far as this
- 10 just being a summary without the underlying documents still
- 11 remain. So if it's admitted, I think that should go towards
- 12 the weight given to this evidence without the underlying
- 13 documents.
- JUDGE POLLACK: What underlying documents do you want?
- MR. SMITH: Well, when looking at these -- any of these
- 16 summaries, we don't have the details of the accidents, we don't
- 17 know -- for one, with the "not reported," there's nothing in
- 18 here from these sheets that we can tell whether or not -- you
- 19 know, it was not reported where that came from or the accident
- 20 details when we're looking at Mr. Pino's -- what has been
- 21 discussed earlier as far as the different factors that are
- 22 taken into account when a termination decision is made in
- 23 looking at an accident.
- I think it still just goes to the weight to be given to
- 25 the evidence when it's just a summary without the underlying

- 1 documentation.
- JUDGE POLLACK: Alright, I'll receive Respondent's 7 and
- 3 8.
- 4 (Respondent Exhibits 7 and 8 received into evidence)
- 5 MR. WINKLER: I told the witness she'd be on the stand for
- 6 about four hours, but I'm done.
- 7 MR. SMITH: I think I have one question.
- 8 CROSS-EXAMINATION
- 9 Q BY MR. SMITH: My name's Tony Smith. We met before.
- 10 A Yes, hi.
- 11 Q When -- "not reported" on the summary sheet on the -- for
- 12 the reason for the termination, is there any way for us to
- 13 figure out that "not reported" was the reason from looking at
- 14 any of the sheets attached to that?
- 15 A By looking at this?
- 16 Q So when we're looking at Respondent's 7, you had mentioned
- 17 the one driver, Lovelady, whose status is "not reported." When
- 18 we look at the sheet for him, is there anything on that sheet
- 19 that would tell us that the accident was not reported?
- 20 A By this, no.
- 21 Q Is -- "not reported," is that the reason then for his
- 22 termination?
- 23 A Correct.
- 24 Q Okay.
- MR. SMITH: I have no further questions.

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- 1 JUDGE POLLACK: Alright.
- 2 COURT EXAMINATION
- 3 Q BY JUDGE POLLACK: Where did you get that information?
- 4 A When I enter an accident, I get it from the supervisor's
- 5 report.
- 6 Q Where did you get the information that Lovelady had an
- 7 accident that was not reported?
- 8 A Okay, well, when I would have Lovelady's on there, I would
- 9 push Enter, and then it's everything that I have put into the
- 10 accident file. I got that from the supervisor's report, which
- 11 states on there that Mr. Lovelady did not report the incident.
- 12 It's in a hardcopy.
- 13 Q Alright.
- JUDGE POLLACK: Anything further?
- MR. SMITH: I think that just goes towards the weight of
- 16 the evidence. No further questions, Your Honor.
- 17 MR. WINKLER: No further questions.
- 18 JUDGE POLLACK: That's all. Thank you.
- 19 (Witness excused)
- MR. WINKLER: If I could just have a few minutes?
- JUDGE POLLACK: Off the record please.
- 22 (Off record)
- 23 MR. WINKLER: Respondent rests, Your Honor.
- MR. SMITH: I have nothing further, Your Honor.
- 25 (Long pause)

- 1 JUDGE POLLACK: I will prepare and file with the Board my
- 2 decision in this proceeding. A copy will be served on each of
- 3 the parties. You are reminded to refer to the Board's
- 4 Rules and Regulations for information regarding the filing of
- 5 briefs and proposed findings for my consideration, and
- 6 regarding procedures before the Board after the issuance of a
- 7 judge's decision.
- 8 Off the record for a moment.
- 9 (Off record)
- 10 JUDGE POLLACK: I'll allow until October 24th for the
- 11 filing of briefs and any proposed findings and conclusions.
- 12 Any request for an extension of time should be made in writing
- 13 to the Associate Chief Judge San Francisco.
- 14 There being nothing further --
- 15 MR. SMITH: Your Honor, may I ask a question?
- 16 JUDGE POLLACK: Yes.
- 17 MR. SMITH: Is that -- I was just looking at the calendar,
- 18 I was trying to count. I believe that's four weeks.
- 19 JUDGE POLLACK: Yes.
- 20 MR. SMITH: Is it four weeks or five weeks that --
- 21 normally I thought it was five weeks for briefs.
- JUDGE POLLACK: I normally give four weeks. If you want
- 23 five weeks, I can do that.
- MR. SMITH: I'd like five if we can. Thank you, Your
- 25 Honor.

1	JUDGE POLLACK: Okay, change that then, briefs are due
2	Wednesday, October 31st, 2012.
3	MR. SMITH: Thank you, Your Honor.
4	JUDGE POLLACK: There being nothing further, the hearing
5	is now closed. Thank you all.
6	(Whereupon, the trial in the above-entitled matter was
7	closed.)
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